

12 JANUARY 1948

I N D E X
of
WITNESSES

<u>Defense' Witnesses</u>	<u>Page</u>
Colonel H. C. Blake, (recalled)	37103
Direct by Mr. Blakeney	37104
(Witness excused)	37107
KATAKURA, Tadashi (recalled)	37107
Direct by Mr. Blakeney	37107
(Witness excused)	37113
OBI, Tetsuzo	37113
Direct by Mr. Blakeney	37113
(Witness excused)	37119
OGOSHI, Kenji	37135
Direct by Mr. Blakeney	37135
Cross by Colonel Ivanov	37137
<u>MORNING RECESS</u>	37139
Cross (cont'd) by Colonel Ivanov	37140
<u>NOON RECESS</u>	37155
Cross (cont'd) by Colonel Ivanov	37156
Redirect by Mr. Blakeney	37158
(Witness excused)	37162

12 JANUARY 1948

I N D E X

	<u>Page</u>
Submission of Law, on the Basis of Agreement between Prosecution and Defense, by Mr. Comyns Carr	37168
Exception by Mr. Cunningham	37172
Reservation by Mr. Logan	37173
Reservation by Mr. Brooks	37174
Reservation by Mr. Levin	37174
Statement by Mr. Yamaoka re Defense having no further evidence at this time	37175
(WHEREUPON, THE DEFENSE RESTED)	37175
Evidence in Rebuttal by Mr. Comyns Carr	37176
Exception by Mr. Furness	37178
Exception by Mr. Cunningham	37186
Request for Decision on the General Objec- tions by Mr. Logan	37187
<u>AFTERNOON RECESS</u>	37187
Statement by the President of the Tribunal, Sir William Webb	37188
Evidence in Rebuttal (cont'd) by Mr. Comyns Carr	37188

12 JANUARY 1948

I N D E X
Of
EXHIBITS

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
2972	3724		Affidavit of KATAKURA, Tadashi		37108
2970	3725		Affidavit of OBI, Tetsuzo		37116
2971	3726		Affidavit of HANDA, Binji		37119
2974	3727		Affidavit of TAKAKURA, Tadashi		37124
2968	3728		Affidavit of KOTANI, Etsuo		37130
2973	3729		Affidavit of HATTORI, Naohiro		37132
2969	3730		Affidavit of OGOSHI, Kenji		37135
3329		3731	Affidavit of Major-General IKEDA		37158
2975	3732		Certificate of non-availability of two (2) documents: Military Administration Plan of the Kwantung Army (Test Plan) March 1942 and Notification on "A Study of Military Administration Shall Be Made" from Vice-Chief of the General Staff to the Chief of Staff of the Kwantung Army August 1942		37162

12 JANUARY 1948

I N D E X

of

EXHIBITS

(cont'd)

<u>Doc.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident</u>	<u>In</u> <u>Evidence</u>
2976	3733		Certificate of non-availability of two (2) documents: Summary of the Speech by the Chief of Staff of the Kwantung Army to the Kwantung Army troop commanders conference held 26 April 1941 and Summary of the Speech of the Chief of Staff of the Kwantung Army to the Kwantung Army troop commanders conference held 5 December 1941		37163
2746	3734		Affidavit of OKADA, Keisuke		37164

Monday, 12 January 1948

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE E. STUART McDOUGALL,
Member from the Dominion of Canada, not sitting from
0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

K
n
a
p
p
&
K
a
p
l
e
a
u

1 MARSPAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except MATSUI, who is represented by counsel. The
5 prison surgeon of Sugamo certifies that MATSUI is
6 ill and unable to attend the trial today. The cer-
7 tificate will be recorded and filed.

8 H. C. B L A K E, recalled as a witness on
9 behalf of the defense, having been previously
10 sworn, testified as follows:

11 MR. HAYES: At the Tribunal please, we
12 are ready to proceed with the remaining evidence in
13 the Soviet phase. As my first witness I wish to
14 recall Lieutenant Colonel H. C. Blake, who has here-
15 tofore testified in this matter. The specific reser-
16 vation of the right to recall Colonel Blake when addi-
17 tional testimony might be available will be found on
18 page 23,455 of the record.

19 THE PRESIDENT (to the witness): You are still
20 on oath, Colonel.

21 Colonel Ivanov.

22 COLONEL IVANOV: Your Honor, I object to the
23 summoning of this witness without previous drafting
24 of the affidavit in accordance with the procedure
25 adopted in this Tribunal. Moreover, if we examine

BLAKE

DIRECT

37,104

1 the order of proof presented by the defense, we shall
2 see the name of this witness is not listed in the
3 order of proof.

4 THE PRESIDENT: But he may have a supple-
5 mentary affidavit. I don't know. There is none
6 listed.

7 MR. BLAKENEY: This matter was argued very
8 fully at the time of Colonel Blake's original appear-
9 ance, at which time it was pointed out that the docu-
10 ments from which he was testifying were secret infor-
11 mation, classified as such by G-2, of the occupation
12 forces. For that reason the Tribunal at that time,
13 after, I would say, full argument, sustained my offer
14 to have this witness testify orally. The testimony
15 which he is now prepared to give is of the same nature
16 precisely as was specifically reserved but relates to
17 a different period of years, not then available.

18 THE PRESIDENT: If the circumstances are simi-
19 lar so will be our decision.

20 DIRECT EXAMINATION

21 BY MR. BLAKENEY:

22 Q You are H. C. Blake, Lieutenant Colonel of
23 the United States Army?

24 A I am.

25 Q Are you serving at present in G-2 of GHQ,

SCAP?

1 A I am.

2 Q At the time of your former testimony in this
3 cause I believe you had not available certain figures
4 on Japanese order of battle estimates for years
5 earlier than 1943. Have you now been able to secure
6 those figures and have you in your possession notes
7 thereof?

8 A I have been able to secure the figures from
9 January of 1942 until July, 1943.

10 Q Is this information of the same type and from
11 the same sources as that given in your testimony here-
12 tofore?

13 A It is.

14 MR. BLAKENEY: I might say for reference that
15 that former testimony will be found on pages 23,428 to
16 455 of the record.

17 Q Now, Mr. Witness, please give us those figures
18 in your possession, starting with the earliest date
19 and putting them, if you can, in the same form as that
20 of your former testimony.

21 A Estimated strength of Japanese army in Manchuria
22 January, 1942, infantry divisions 12, cavalry brigades
23 1, total strength 640,000.

24 Korea, January, 1942, two divisions, strength
25 135,000; July 1942, Manchuria, 14 divisions, 1

BLAKE

DIRECT

37,106

cavalry brigade, total strength 710,000.

1 Korea, July, 2 infantry divisions, 135,000.

2 Manchuria, January, 1943, 14 divisions, 2

3 armored divisions, 1 cavalry brigade, total strength
4 740,000.

5 Korea, January, 1943, 2 divisions, 135,000.

6 Manchuria, July, 1943, 14 divisions, 2 armored
7 visions, 1 cavalry brigade, total strength 750,000.

8 Korea, July, 1943, 2 divisions, 135,000.

9 Estimated Japanese air strength in Manchuria
10 and Korea, June, 1942, 850 combat planes; August,
11 1942, 925 planes; January, 1943, 528 planes; June, 1943,
12 415 planes.

13 Q Those are all the figures you have?

14 A Those are all the figures I have.

15 MR. BLAKENEY: You may cross-examine.

16 THE PRESIDENT: Colonel Ivanov.

17 COLONEL IVANOV: Your Honor, the prosecution
18 requests once more that the information which was given
19 orally by this witness should be presented in the form
20 of an official document, bearing proper signatures and
21 seals.

22 The prosecution invites the attention of the
23 Tribunal to exhibits 706, 724, and 709. The prosecu-
24 tion does not desire to cross-examine this witness.
25

THE PRESIDENT: Major Blakeney.

1 MR. BLAKENEY: In connection with the request
2 for the documents, I point out that the question of
3 disclosure of these documents was fully argued on pages
4 23,438 to 23,451 of the record and was there decided
5 adversely to the prosecution's contention.

6 THE PRESIDENT: In view of our earlier decision,
7 the objection is overruled by a majority.

8 MR. BLAKENEY: I ask that the witness be ex-
9 cused on the usual terms.

10 THE PRESIDENT: He is excluded accordingly.

11 (Whereupon, the witness was excused.)

12 MR. BLAKENEY: I call as my next witness
13 KATAKURA Tadashi, whose testimony is embodied in his
14 affidavit, defense document 2972.

15 - - -

16 T A D A S H I K A T A K U R A, recalled as a
17 witness on behalf of the defense, having been
18 previously sworn, testified through Japanese
19 interpreters as follows:

20 THE PRESIDENT: You are still on your
21 former oath.

22 DIRECT EXAMINATION

23 BY MR. BLAKENEY:

24 Q Please state your name and residence.
25

1 A My name is KATAKURA Tadashi, my address 2658
2 Gun-chome, Nakameguro, Meguro-Ku, Tokyo.

3 MR. BLAKENEY: Please let the witness be shown
4 defense document 2972.

5 (Whereupon, a document was handed
6 the witness.)

7 Q Please examine that, Mr. Witness, and state
8 to the Tribunal if it is an affidavit duly executed
9 by you.

10 A This is my affidavit.

11 Q Are the contents thereof true and correct?

12 A Yes, they contain the truth.

13 MR. BLAKENEY: I offer in evidence the affi-
14 davit defense document No. 2972.

15 THE PRESIDENT: Admitted on the usual terms.

16 CLERK OF THE COURT: Defense document 2972
17 will receive exhibit No. 3724.

18 (Thereupon, the document above
19 referred to was marked defense exhibit 3724
20 and received in evidence.)
21
22
23
24
25

1 MR. BLAKENEY: I read the exhibit which,
2 omitting the formal parts, is as follows:

3 "I occupied the post of staff officer of the
4 Kwantung Army, serving the latter half of my term as
5 Chief of the 4th Section; then the post of Chief of the
6 Manchurian Section in the Military Affairs Section of
7 the War Ministry; and later the post of senior staff
8 officer of the Kwantung Defense Army. During these
9 terms I was in charge of matters concerning the Man-
10 chukuoan National Army and the National Military Service
11 Law.

12 "Relating to some of those matters I have al-
13 ready testified before this Tribunal on 25 March 1947.
14 I testify hereby about the right of supreme command in
15 Manchukuo and the relation between the National Military
16 Service Law and war preparation against the USSR, which
17 matters were not included in my former testimony.

18 "1. The Right of Supreme Command of the Man-
19 chukuoan National Army.

20 "The right of supreme command of the Manchukuoan
21 National Army was in the hands of the Manchukuoan Emperor.
22 This fact is clear from the provision of the 11th
23 Article of the Organic Law, which is the constitutional
24 law of Manchukuo (exhibit No. 436): 'The Emperor com-
25 mands the Army, the Navy and the Air Force.' According

1 to the official memorandum exchanged between the Com-
2 mander in Chief of the Kwantung Army HONJO and the Chief
3 Executive P'u-Yi, dated 10 March 1932 (exhibit No. 280),
4 and the Japan-Manchukuo Protocol (exhibit No. 440),
5 Japan and Manchukuo were to cooperate in their national
6 defense, and the right of stationing Japanese troops
7 was approved; however, there was no provision in them for
8 delegation of the right of supreme command.

9 "But, at the time of conclusion of the Proto-
10 col, a secret treaty called the Defensive Military
11 Treaty, was separately concluded between the military
12 authorities of Japan and Manchukuo. The men concerned
13 in the conclusion of the treaty were Lieutenant General
14 KOISO (the Vice-Chief of Staff of the Kwantung Army),
15 Rear Admiral KOBAYASHI (Chief of the Naval Mission in
16 Manchukuo), and Minister of Military Administration
17 Chang. Copies of the documents were retained by both
18 the Manchukuoan Government and the headquarters of the
19 Kwantung Army; I, however, do not know what became of
20 them after the surrender. The contents of the treaty
21 are as follows. I remember the contents very well
22 since I participated in the drafting of it, and the
23 managing of it subsequently.

24 "(1) On the stationing of Japanese troops for
25 the sake of the joint defense of Japan and Manchukuo,

1 the Manchukuoan side was to guarantee to Japan enjoy-
2 ment of the necessary freedom and to afford convenience
3 for Japanese military actions to accompany it.

4 "(2) In the event of invasion by an enemy, or
5 in the case of Japanese and Manchukuoan forces (both
6 army and navy) cooperating in fights, or in the case of
7 both armed forces joining in cooperative fighting ac-
8 tions in order to maintain public peace such as sup-
9 pression of the banditti, etc., the Japanese forces
10 could command the Manchukuoan forces in accordance with
11 necessities.

12 "The second provision was made because of the
13 necessity for smoothness of operational actions. In
14 other words, it provided that Manchukuoan troops might
15 come under the command of the Japanese commander of the
16 force in each separate locality in case of any invasion
17 by a foreign enemy of Manchukuo, or when the troops of
18 the two countries cooperated in the suppression of
19 bandits in times of unsettlement. This was, in other
20 words again, a delegation of the right of command for
21 a specific instance of battle. Therefore, the right of
22 command could never be delegated to a Japanese commander
23 at all in peacetime except on the specific occasions of
24 battles or suppression of bandits.
25

"There was neither a provision that the right

1 of supreme command should be in the hands of the Com-
2 mander in Chief of the Kwantung Army, nor such a substan-
3 tial fact.

4 "Subsequently, at the time of the abolition of
5 extraterritorial rights in December 1937, matters con-
6 cerning the stationing of Japanese forces were re-
7 arranged, and simultaneously the first provision of the
8 defensive military treaty was made public; the second
9 provision, on the right of command, however, remained
10 still a secret treaty.

11 "2. The National Military Service Law.

12 "I have already fully testified before this
13 Tribunal (25 March 1947) about how the Manchukuoan
14 National Army was organized, etc. The purpose of the
15 National Military Service Law was to get rid of the privat
16 soldiery of the old-time war lords, who were of bad
17 quality and who had composed the National Army up to
18 that time, and to elevate the soldiery to a superior
19 quality. Also, as an ultimate object, the National Army
20 of Manchukuo was organized primarily for the purpose of
21 maintenance of public peace. That the purpose of the
22 law was not formation of a large army for a war against
23 the USSR is, therefore, quite clear by the fact that the
24 law provided no system of a reserve corps, as in other
25 countries, but provided only for the system of active

1 service. Actually, there was no change in the strength
2 of the Manchukuoan Army after and before the enactment
3 of the law; it remained generally about 80,000."

4 You may cross-examine.

5 THE PRESIDENT: Colonel Ivanov.

6 COLONEL IVANOV: Your Honor, I invite the
7 attention of the Tribunal to exhibits 230, 233, 241,
8 280, 436, 440, 670, and 3371. The prosecution does not
9 desire to cross-examine this witness.

10 MR. BLAKENEY: I ask that he be released on
11 the usual terms.

12 THE PRESIDENT: He is released accordingly.

13 (Whereupon, the witness was
14 excused.)

15 MR. BLAKENEY: I call as my next witness OBI,
16 Tetsuzo, whose testimony is contained in his affidavit,
17 defense document 2970.

18 T E T S U Z O O B I, called as a witness on behalf
19 of the defense, being first duly sworn, testified
20 through Japanese interpreters as follows:
21

22 DIRECT EXAMINATION

23 BY MR. BLAKENEY:

24 Q Please state your name and residence, Mr. Wit-
25 ness.

A My name is OBI, Tetsuzo. My address is No.

OBI

DIRECT

37,114

280 Ogikubo, 3-Chome, Suginami-ku, Tokyo.

1 Correction: 208.

2 You will be shown defense document No. 2970,
3 which I ask you to examine and state to the Tribunal
4 whether that is an affidavit duly executed by you.

5 (Whereupon, a document was handed

6 to the witness)

7 A Yes.

8 Q Are the contents of that affidavit true, to the
9 best of your knowledge?

10 A Yes.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OBI

DIRECT

37,115

G
r
e
e
n
b
e
r
g
&
Y
e
l
d
e
n

1 MR. BLAKENEY: I offer in evidence the
2 affidavit, defense document No. 2970.

3 THE PRESIDENT: Colonel Ivanov.

4 COLONEL IVANOV: Your Honor, the prosecution
5 objects to paragraph numbered 1 of this affidavit on
6 the following grounds. The Tribunal have at their
7 disposal the Organic Law of Manchukuo and the treaty
8 mentioned in the affidavit which the affiant tries to
9 interpret. These documents, exhibit No. 436 and
10 others, speak for themselves, and there is no need in
11 the witness' explanations concerning them and, moreover,
12 the witness is not competent to interpret them.
13 Besides, in paragraph 1 the witness gives facts
14 irrelevant to the issues involved in this case. At
15 any rate the personal opinion of this witness given
16 in paragraph 1, containing a negative characterization
17 of forces resisting the Japanese invaders, is no doubt
18 of no interest to this Tribunal. Therefore, we ask
19 that this paragraph be deleted.

20 THE PRESIDENT: Major Blakeney.

21 MR. BLAKENEY: I think we spend a good deal
22 of time on nonessentials, for the matters stated in
23 the first paragraph of section 1 are plainly the
24 matters of inducement, stating the background against
25 which he testifies to the facts contained in the

following paragraphs.

1 THE PRESIDENT: Does exhibit 436 expressly
2 state where the Supreme Command lies?

3 MR. BLAKENEY: Yes, sir. We had a quotation
4 from it in the preceding affidavit, the middle of the
5 first paragraph under the heading "1". I freely concede
6 that this witness is not competent to interpret the
7 treaty and I don't think he purports to do so.

8 THE PRESIDENT: In the strict sense it is
9 repetitive, but that hardly matters. The objection is
10 overruled. Admitted on the usual terms.

11 CLERK OF THE COURT: Defense document 2970
12 will receive exhibit No. 3725.

13 (Whereupon, the document above
14 referred to was marked defense exhibit
15 No. 3725 and received in evidence.)

16 MR. BLAKENEY: I read the exhibit, omitting
17 the formal parts:

18 "I occupied the post of Chief of the 4th
19 Section as a staff officer of the Kwantung Army from
20 March 1942 to August 1944.

21 "1. According to the provision of the
22 Organic Law of Manchoukuo (exhibit No. 436), the right
23 of the supreme command of the Manchoukuo National Army
24 was in the hands of the Emperor and not in that of the
25

1 Commander in Chief of the Kwantung Army. The defensive
2 military treaty was in effect, and according to the
3 provisions of the treaty, the right of command could
4 be delegated to a Japanese commander, in cases when
5 an enemy invaded the country or when Japanese and
6 Manchoukuoan forces cooperated in an operation as
7 national defense.

8 "During my service in the headquarters of the
9 Kwantung Army, a suppressing operation was made in
10 Jehol Province in 1942-1943 against the communistic
11 banditti, and Manchoukuoan troops of the 5th military
12 area of Jehol were commanded by the commander of the
13 Kwantung Defense Army and a cooperative operation of
14 both forces was carried out. Manchoukuo was calm and
15 peaceful during my time there, and this was the only
16 instance of such delegation of command. The command
17 was in no instance delegated to the commander of the
18 Kwantung Army.

19 "2. During my service, the number of the
20 Manchoukuoan Army was about 80,000 in total. And its
21 duty was specifically the defense of the country and
22 trainings were done accordingly. Its quality and arma-
23 ment were far inferior for being against the USSR's army.

24 "3. General UMEZU, the Commander in Chief of
25 the Kwantung Army, held various kinds of meetings which

1 ~~were accompanied by dinner usually. The reason was~~
2 the necessity of liaison and cooperation between
3 various people on their execution of duties; noon of
4 every Wednesday he held meetings with the staffs of
5 Army, Navy, Embassy and Kwantung Bureau; noon of
6 every Saturday he held meetings with the Chief of
7 General Affairs, Chief of the Central Headquarters of
8 the Concordia Society and the staffs of his head-
9 quarters. I myself, always attended both these
10 meetings, and found them simply convivial meetings
11 and not meetings whereupon the commander gave orders
12 or instructions."

13 You may cross-examine.

14 THE PRESIDENT: Colonel Ivanov.

15 COLONEL IVANOV: Your Honor, I call the
16 attention of the Tribunal to exhibits 57, 230, 231,
17 670 and 3371. The prosecution doesn't desire to
18 cross-examine this witness.

19 I would like to state that the prosecution
20 does not desire to cross-examine the next three witnesses
21 that are on the order of proof submitted by the defense.
22 Probably this will save some time.

23 THE PRESIDENT: Yes, it should, Colonel.
24 Major Blakeney.

25 MR. BLAKENEY: Then I ask that this witness

1 be excused on the usual terms.

2 THE PRESIDENT: He is excused accordingly.

3 (Whereupon, the witness was excused.)

4 MR. BLAKENEY: I now offer in evidence
5 defense document No. 2971, being the affidavit of the
6 witness HANDA, Binji.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Defense document
9 No. 2971 will receive exhibit No. 3726.

10 (Whereupon, the document above
11 referred to was marked defense exhibit
12 No. 3726 and received in evidence.)

13 MR. BLAKENEY: I read the exhibit, omitting
14 the formal parts:

15 "1. In June 1934, I was called to become a
16 professor of Ta Tung College of Manchoukuo, and left
17 my former post as teacher of the Legal Literature
18 course of the Kyushu University. Concurrently with
19 the above position I was appointed as a committeeman
20 of Central Headquarters of the Concordia Society, and
21 to the end of the war kept up relations with the
22 Society as a committeeman or consultant of it.

23 "Furthermore, in August 1942, when Manchoukuo
24 enacted the National Labor Service Law and the Labor
25 Service Bureau was established, I was appointed the

1 first chief of the bureau. Then, as the problem of
2 labor power in the country became acute, the Labor
3 Ministry was established in March 1945, when I was
4 appointed vice-chief of the Ministry, retaining the
5 office until the end of the war. After the surrender,
6 I was interned in the USSR, and came home on 2 September
7 of this year.

8 "2. Originally, Manchoukuo had little
9 population in comparison with the size of the land,
10 and the manpower for agriculture, industry and con-
11 struction works could hardly be self-supplied. There-
12 fore, she had depended on a large number of laborers
13 who came from North China, the so-called 'coolies.'
14 The number of laborers from North China reached
15 800,000 annually before the foundation. At the time
16 of the national foundation the number had decreased
17 to 400-500,000 for the time being. After that, in
18 accordance to the stabilization of the public peace
19 the number increased year by year and in 1940 went
20 beyond 1,300,000.

21 "3. However, because of the fact that the
22 control of the international financial exchange was
23 strengthened in 1939, and that inflation in North
24 China became extensive, after the latter half of 1940
25 the circumstances of the labor-power changed quickly.

1 The labor-power was rapidly diminished, and finally
2 the number of immigrant laborers fell below 300,000
3 in 1944. Then large difficulties arose both in the
4 fields of industry and agriculture as a matter of
5 course, as well as in the achievement of production
6 and construction in the fields of construction works.

7 "As for the Manchoukuoan Government, who
8 apprehended the situation quickly, it was necessary
9 to establish rapidly the domestic organization for
10 self-supply of labor-power, stealing a march on the
11 shortage. Then a new organization of labor was
12 established in 1941. One of its purposes was supply
13 and security of manpower through the medium of admin-
14 istrative measures, and the other was the National
15 Labor Service system by law.

16 "4. Since the basis of improvement of the
17 country was to establish the good custom of 'everybody
18 works' among the people by building respect for labor,
19 the object of the establishment of the new labor
20 organization was to train the people through actual
21 labor and simultaneously to be completely ready for
22 self-supply of labor-power by bringing up and securing
23 the necessary labor-power for the country.

24 "(a) The principle of security and supply of
25 labor-power through the medium of administrative measures

was: to allot to each province and prefecture the
1 number of laborers which should be secured and
2 supplied, by considering the actual circumstances
3 of each local region of the country; to raise the
4 laborers through each local administrative organ,
5 which was to keep careful watch on the labor-control
6 situation subsequently; and to allot and arrange the
labor-power raised to the industries in the plan made
an advance by the central administrative office of
10 the Ministry of National Welfare, later the Labor
11 Ministry, which was concerned with the business. The
12 laborers raised by these measures were approximately
13 20- to 45-year-old males, and the men who were in
14 service under the National Service Law were excluded.
15 The number was about 1,600,000 in the plan of 1945.
16 The laborers raised by these measures were to be
17 paid official wages (5 or 6 yen per day) indiscrimin-
18 ately, and to be given assistance in securing their
19 rations of necessity for daily life.
20

21 "The time of labor-service was generally six
22 months, once for a person, and the proportion of
23 laborers employed was 15% of the available number.
24 The nature of the labor was ordinary production
25 (agriculture, industry and public works) and work
for the army (1/3 of the total).

"(b) The National Labor Service System was
1 based on the National Labor Service Law, and designed
2 to put all young men in service for 12 months during
3 the three years between the ages of 21 and 23, excluding
4 the men in military service and deformed or disabled
5 persons or who had other disqualifying defects.
6 (Later, in 1945, the time of the duty was amended to
7 three years, and according to the situation men might
8 return to their homes after two years' duty). These
9 persons were allotted, by the central administrative
10 office concerned, to various lines of production and
11 construction, according to a plan. The number was
12 350,000 in the plan of 1945. During the time of duty,
13 they were paid a fixed allowance. Since their lives
14 were quite pleasant and suitable to young men's
15 spirits, the men worked happily with spirit and pride.
16
17 "5. The chief of the central headquarters of
18 the Kyowakai was to be appointed by the president of
19 the Kyowakai (Lieutenant-General MIYAKA, who was a
20 retired officer, was not a representative of the
21 Kwantung Army, but only a chief of the Central Head-
22 quarters appointed by the president). This is clear
23 from the fact that a native of Manchuria, such as
24 Mr. Yu Ching-yuan, was appointed to the post."
25

1 THE PRESIDENT: Colonel Ivanov.

2 COLONEL IVANOV: In connection with the
3 affidavit just read, I would like to invite the
4 attention of the Tribunal to exhibits 230, 233, 670,
5 699, 3371 and 731A, and to pages 31,890 and 3,093
6 of the transcript.

7 MR. BLAKENEY: I now offer in evidence the
8 affidavit of TAKAKURA, Tadashi, defense document 2974.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Defense document 2974
11 will receive exhibit No. 3727.

12 (Whereupon, the document above
13 referred to was marked defense exhibit
14 No. 3727 and received in evidence.)

15 MR. BLAKENEY: I read the exhibit which,
16 omitting the formal parts, is as follows:

17 "I, TAKAKURA Tadashi, was born in February
18 1903, and reside now in Tokyo, Bunkyo-ku, Otsukanana-
19 Machi No. 57. I was appointed chief of the Agriculture
20 Section of the Agriculture Ministry of Manchukuo in
21 October 1941. I was transferred to the post of chief
22 of the Planning Section of the General Affairs Board
23 in July 1943. In May 1945, upon a change in the
24 official system, my post was changed to Vice-Chief
25 of the Planning Bureau of the General Affairs Board,

which I retained until the Japanese surrender.

1 (1) During my tenure of office as Chief
2 of the Agriculture Section of the Agriculture Ministry,
3 I participated in the drawing up of the 2d 5-year plan
4 of industrial construction. The basic ideas of this
5 2d 5-year plan were almost the same as that of the
6 1st 5-year plan, the stabilization of the national
7 welfare and the completion of the defense power. And
8 from the viewpoint of the actual result of the 1st
9 5-year plan, the security and the stabilization of
10 the national welfare of manchukuo especially were
11 taken up as the most important among the ideas, and
12 the promotion and the development of light industries
13 which had as their purpose the supply of material for
14 daily use of the people and the improvement of agri-
15 cultural production were assigned in the plan equal
16 importance with the parts relative to heavy industry
17 and transportation and communication.

19 "However, at the time when this plan was
20 established, unexpectedly the Pacific War occurred,
21 and it became impossible to execute the plan as it
22 was. And since supplies of materials from Japan
23 became gradually more difficult, while Japan's de-
24 mands for imports of agricultural products, steel,
25 aluminum and coal had increased accompanying the

1 progress of the war, the necessary reinforcement of
2 production was made by making up plans for increase
3 of production in each year according to the change
4 of the situation as mentioned above. However, prac-
5 tically it was difficult to fulfill Japan's require-
6 ments to some extent, and at the same time to rein-
7 force the power of national defense of Manchukuo and
8 to increase the production of material for national
9 welfare. Thus, in the end, we took measures to keep
10 and stabilize the national welfare and to accept the
11 requests of Japan by risking even the decrease of the
12 power of national defense, which also the staff offi-
13 cers of the Kwantung Army who had responsibility for
14 co-defense of Manchukuo well understood. A reason
15 for taking such measures was also our faith in the
16 existence and effect of the Russo-Japanese Neutrality
17 Pact.

18 "The above matters are instanced by the
19 following concrete facts. First, the production of
20 arms in Manchukuo was the construction of training
21 planes for Japan's needs, and production of guns and
22 bullets mainly for the use of the Manchukuoan forces.
23 As for planes in 1944, the actual result of the
24 construction of training planes was 784, and the
25 total amount of gun production was around 25,000,000

1 Yen, which figures show that the production of arms
2 was quite small. Second, the actual results of the
3 production and distribution of steel, iron, aluminum
4 and coal were that internal consumption accounted for
5 much the greater part, and that the acquisitions of
6 the Kwantung Army, except of aluminum, were of very
7 small proportions.

8 "(2) The Kwantung Army never issued any
9 order at all with respect to the policies of the
10 Manchukuoan Government. There was the custom of
11 liaison and preliminary conference between the Kwan-
12 tung Army and the Manchukuoan Government, regarding
13 important policies which had connection with the
14 national defense or policies which required confer-
15 ence with the Japanese Government.

16 *From the viewpoint of defense, the Kwantung
17 Army made in written form proposals of some abstract
18 matters to the Manchukuoan Government; such cases,
19 however, were very rare. While the government took
20 up and put into practice the matters proposed when
21 they were proper and there were no difficulties accom-
22 panying their realization.

23 "(3) I was often told by Mr. TAKEBE, Chief
24 of General Affairs, that Commander-in-Chief of the
25 Kwantung Army UMEZU was quite careful toward the

1 USSR relations and wished that the government staff
2 members would avoid so far as possible any action
3 which might irritate the USSR. In such circumstances,
4 after his taking office in Hsinking the border be-
5 tween Manchukuo and the USSR was quite calm and
6 trouble there greatly decreased."

7 I now offer in evidence defense document
8 No. 2968, the affidavit of the witness KOTANI, Etsuo.

9 THE PRESIDENT: Colonel Ivanov.

10 COLONEL IVANOV: Your Honor, the prosecution
11 objects to questions 4 and 7 and to the replies given
12 to them by the witness. The reply given by the wit-
13 ness to the third question in substance exhausts the
14 whole subject. Therefore, the replies given by the
15 witness to questions 4 and 7 are repetitive; and,
16 besides, in the reply to the 4th question, the witness
17 speaks not only on his own behalf, but also tries to
18 make general assertions on behalf of the people.
19 Besides, the 4th question is obviously grossly lead-
20 ing. Therefore, I ask that questions 4 and 7 and the
21 replies given to them by the witness be deleted from
22 the affidavit.
23

24 THE PRESIDENT: Major Blakeney.

25 MR. BLAKENEY: Question 7: the information
contained in that answer is a direct refutation of

1 testimony presented by the prosecution through the
2 witness MATSUURA, Kusuo, the page reference in the
3 record being 31,959-962, at which point MATSUURA
4 testifies that this witness, KOTANI, came to the
5 Mongolia Army and held conferences which he thought
6 were related to operational matters.

7 As to question 4 and the answer thereto, I
8 think it has relevance for this Tribunal to know the
9 duties of intelligence officers in as much as the
10 same prosecution witness, MATSUURA, testified to
11 having received a variety of advices on operational
12 matters from intelligence officers.

13 THE PRESIDENT: Why was question 4 put in
14 leading form? It was quite unnecessary.

15 MR. BLAKENEY: I do not know, your Honor,
16 because I did not put it, but it seems to me that it
17 is late in the day for the Soviet prosecutor to
18 object to a leading question on affidavit.

19 THE PRESIDENT: Well, he did not; I pointed
20 it out.

21 MR. BLAKENEY: He did make that objection,
22 but your Honor will remember that in very many
23 instances we made precisely the same objection to
24 affidavits of the prosecution.

25 THE PRESIDENT: The objection is overruled

1 and the document is admitted on the usual terms.

2 CLERK OF THE COURT: Defense document 2968
3 will receive exhibit No. 3728.

4 (Whereupon, the document above
5 referred to was marked defense exhibit No.
6 3728 and received in evidence.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

W
h
a
l
e
n
&
M
o
r
s
e

1 MR. BLAKENEY: I read the exhibit, omitting
2 the formal parts.

3 "Q Were you a staff officer of the Kwantung
4 Army around September 1942?

5 "A Yes.

6 "Q What sort of duties had you as a staff
7 officer of the Kwantung Army?

8 "A I was attached to the 2d Section, and I
9 was in charge of intelligence.

10 "Q Did you know the operations plans of the
11 Kwantung Army?

12 "A I have neither seen the documents nor
13 been told or shown the contents of them.

14 "Q In the Kwantung Army, was it not true that
15 the men who were engaged in the intelligence services
16 were never shown the operations plans?

17 "A The duty of those engaged in intelligence
18 services was to collect the necessary information for
19 making up the operations plans in consideration of all
20 possible cases, and to offer them to the Commander-in-
21 Chief as references for operations. They, however,
22 were neither consulted regarding the operations plans
23 which had already been determined, nor shown them at
24 all. I thought that was in the nature of the plans
25 themselves, and never requested to be shown them.

1 "Q Were you dispatched to the Mongolia Sta-
2 tionary Army around September 1941?

3 "A Yes, I was.

4 "Q What was the purpose of that?

5 "A Mainly, the purposes were consultation
6 on intelligence and inspection of the circumstances
7 of Eastern Inner Mongolia.

8 "Q Were there any conferences on the operation
9 matters?

10 "A No, not at all. I had neither knowledge
11 of nor duty concerning operations plans. I could not
12 do such a thing, even if it were a temporary duty.

13 "Q What kind of consultation was had on intel-
14 ligence?

15 "A It was a conference for necessary agree-
16 ments on the alterations of the intelligence-collection
17 areas in charge of both armies.

18 "Q It happened quite often, that a staff offi-
19 cer would come or go to or from the Kwantung Army or
20 the Mongolia Stationary Army, did it not?

21 "A Yes."

22 I now offer in evidence defense document No.
23 2973, being the affidavit of HATTORI Naohiro.

24 THE PRESIDENT: Admitted on the usual terms.

25 CLERK OF THE COURT: Defense document 2973

1 will receive exhibit No. 3729.

2 (Whereupon, the document above re-
3 ferred to was marked defense exhibit No. 3729
4 and received in evidence.)

5 MR. BLAKENEY: I read exhibit No. 3729.

6 "1. I am an ex-major of the Japanese army. I
7 am living in Tokyo to Shinjuku-ku Shimochiai 2 Chome
8 804.

9 "I served in the headquarters of the Kwantung
10 Army as a cipher officer at the time when the Kantokuen
11 started in 1941. Later I was transferred to the cipher
12 section of the General Staff Office, in September 1942.

13 "2. I am acquainted with MATSUURA Kusuo,
14 having had connection with him on our businesses. I
15 have neither seen operations plans, nor been shown the
16 contents of them by my superiors. As to the Kantokuen,
17 I am entirely ignorant of the contents of the plan. I
18 know, however, that the Kwantung Army was reinforced
19 at that time. I have no recollection whether I ever
20 talked with MATSUURA relating to this problem. At that
21 time, however, there were various rumors among young
22 officers; I might, therefore, have talked with MATSUURA
23 about these rumors. I never told MATSUURA anything
24 concerning the contents of either operations plans or
25 the Kantokuen; I could not have, because I did not know

1 them.

2 "3. The conferences of the cipher clerks at
3 the General Staff Office used to be held every year as
4 a custom."

5 THE PRESIDENT: Colonel Ivanov.

6 COLONEL IVANOV: Your Honor, the prosecution
7 calls the attention of the Tribunal to the prosecution's
8 exhibit No. 833.

9 MR. BLAKENEY: I call as my next witness
10 OGOSHI Kenji, whose testimony is contained in his
11 affidavit, defense document No. 2969.

12 THE PRESIDENT: Is Lieutenant General IKEDA
13 a member of the Japanese bar? He is co-counsel with
14 you we understand.

15 MR. BLAKENEY: He is associate counsel for
16 General UMEZU, but like the vast majority of the counsel
17 in this Tribunal he is not a member of the bar.
18
19
20
21
22
23
24
25

1 K E N J I O G O S H I, called as a witness on
2 behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as follows:

4 DIRECT EXAMINATION

5 BY MR. BLAKENEY:

6 Q Please state your name and present residence,
7 Mr. witness.

8 A My name is OGOSHI, Kenji; and my address,
9 No. 35 Akazutsumi-Machi, 1 chome, Setagaya-ku, Tokyo.

10 Q Please examine defense document No. 2969 which
11 will be handed to you and state whether it is an
12 affidavit duly executed by you?

13 (Whereupon, a document was handed to
14 the witness.)

15 A This is my affidavit.

16 Q And are the contents thereof true and correct?

17 A Yes, they are true and correct.

18 MR. BLAKENEY: I offer in evidence the affi-
19 davit.

20 THE PRESIDENT: Admitted on the usual terms.

21 CLERK OF THE COURT: Defense document 2969
22 will receive exhibit No. 3730.

23 (Whereupon, the document above
24 referred to was marked defense exhibit No.
25 3730 and received in evidence.)

1 MR. BLAKENEY: I read the exhibit, omitting
2 the formal parts:

3 "1. I served in the 5th Section of the staff
4 of the Kwantung Army from September 1941, and subsequentl:
5 after Major-General IKEDA was removed from his position
6 as Chief of the 5th Section in July 1942, I succeeded
7 him and was the Chief of the Section until March 1943.

8 "2. The 5th Section was newly established in
9 September 1941. The duty of the section was to study
10 how to make easier the operations of troops by arrang-
11 ing the rear areas of army according to the operation
12 of an army. In the past, in the army the military
13 supply organization was to take charge of the adminis-
14 tration of occupied zones. The system and methods of
15 administration were not studied in peace-time; but it
16 is quite necessary to study the administration of oc-
17 cupied areas in peace-time parallel with the drawing
18 up of the plans of operation. Thus, I was told, the
19 study came to be carried out.
20

21 "3. In September 1941, an instruction was given
22 by the General Staff to the Kwantung Army to the effect
23 that the study of administration of occupied zones
24 was to be made and that plans should be presented accord-
25 ingly. Then the studies were put under way. This
instruction was kept in the headquarters of the Kwantung

1 Army; after the surrender, however, I do not know
2 what became of it. The main purpose of these studies
3 was investigation of measures necessary to be taken
4 to maintain public peace and order in the rear of the
5 operational armies and to smooth their operations.
6 The tentative plan was accomplished around March 1942,
7 as the result of the study. Since the plan was not a
8 complete one, it was sent to the operations section
9 of the Kwantung Army and for reference to the General
10 Staff. We did not obtain the approval of the Commander-
11 in-Chief of the Kwantung Army, since it was not com-
12 plete.

13 "4. At the same time I left the section the
14 section was abandoned."

15 You may cross-examine.

16 THE PRESIDENT: Colonel Ivanov.

17 CROSS-EXAMINATION

18 BY COLONEL IVANOV:

19 Q Mr. Witness, which of the accused is your
20 client in your capacity of defense counsel at this
21 trial?

22 A I am assistant counsel to Dr. UZAWA. Dr. UZAWA
23 is counsel for all accused.

24 Q And so in this way you are defense counsel of
25 the accused UMEZU under whose command you were in the

past, isn't that so?

1 A Well, it would amount to that.

2 Q Since what time did you know IKEDA, Sumihisa
3 whose name is mentioned in your affidavit?

4 A From my boyhood days.

5 Q Mr. Witness, were you present at the morning
6 session of the Tribunal on Thursday, January the 8th
7 when the witness IKEDA, Sumihisa was giving his testi-
8 mony in the course of the cross-examination?

9 A By "court" do you mean this room?

10 Q Yes.

11 A If that is your meaning I was not in this room.
12 I was in the ouilding.

13 Q Have you read the transcript of the proceedings
14 of this Tribunal for January the 8th?

15 A No, I have had no occasion to read it.

16 Q Mr. Witness, were you in July 1941 attached
17 to the General Staff and were you at that time engaged
18 together with IKEDA, Sumihisa and other officers in the
19 study of the occupation regime for Soviet territories?

20 A It was a mistake to say that I was dispatched.
21 I was from before a member of the General Staff Office.
22 Furthermore, your question asked whether we were study-
23 ing the problem of regimes in occupied territory in
24 the Soviet Republic, but our duties were not restricted
25

solely to that object. That was one of our duties.

1 THE PRESIDENT: We will recess for fifteen
2 minutes.

3 (Whereupon, at 1045, a recess was
4 taken until 1100, after which the proceedings
5 were resumed as follows:)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

D
u
d
a
&
S
p
r
a
t
t

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Colonel Ivanov.

4 BY COLONEL IVANOV (Continued):

5 Q Mr. Witness, in the general staff the study
6 of the occupation regime for Soviet territories was
7 supervised since July, 1941, by Major General HATA,
8 Hikosaburo, a well-known expert on Russian affairs?

9 A As I have already told you, Mr. Prosecutor,
10 I wish it to be understood, first of all, that this,
11 the study of occupation regimes, was one of the
12 questions which we undertook, but that there were
13 other questions also under study, and with that in
14 mind I shall proceed. I do not know whether I am in
15 any position to say whether HATA, Hikosaburo, was
16 an authority on Soviet matters or not, but it is a
17 fact that he supervised our studies.
18

19 Q Mr. Witness, in September, 1941, as you say
20 in paragraph numbered 2 of your affidavit, was estab-
21 lished the fifth section of the Kwantung Army Head-
22 quarters for the continuation of the study of the
23 regime for the territories proposed to be occupied by
24 the Kwantung Army. Tell us, did all the officers of
25 that group of the general staff, members of which were
you and IKEDA, become members of that section?

1 A I shall reply after correcting the pre-
2 liminary statement you made in your question. Among
3 the tasks which were assigned us was the study of
4 questions which would arise in the event certain
5 areas are occupied by the Soviet Union, and another
6 of the subjects assigned for study to us was the
7 administration of certain areas in Manchuria in case
8 the territory of Manchukuo is invaded by the Soviet
9 forces.

10 THE INTERPRETER: Slight correction to the
11 latter part: The study of the question of coopera-
12 tion on the part of the army in connection with the
13 administration of territory or areas in the event
14 this territory of Manchukuo is invaded by Soviet Russia.

15 A (Continuing) The third large subject of
16 study on our part was the administration of areas which
17 might be occupied in the event our army advanced in
18 counterattack against the Russian forces. These were
19 the problems which were assigned to us for study.

20 I have just answered to the first part of
21 the question. Now, as to the second part, you seem
22 to have implied that the Kwantung Army had a schedule
23 or was expecting to occupy Soviet territory. That
24 was not the case. There was no such schedule or
25 plan at all. It is my understanding that these steps

1 were taken in apprehension of the possibility of
2 being the recipients of an attack from the Soviet
3 Union.

4 And now as to the last part of your question
5 as to who from the General Staff Office were
6 transferred to the Kwantung Army. If my memory serves
7 me, all the members of the staff who were under the
8 supervision of General HATA were transferred including
9 myself.

10 Q Mr. Witness, I will require that you answer
11 only the question that is asked you. Only the last
12 words of your reply were in answer to my question.

13 Mr. Witness, you do not deny the contention
14 of defense witness IKEDA, who on January 8 confirmed
15 in the Tribunal that he was chief of the section of
16 the Kwantung Army Headquarters engaged in the study
17 of the occupation regime in the territories of the
18 Soviet Union, Mongolian Peoples Republic, and Man-
19 churia, page 36,946 of the transcript?

20 A I do not know what IKEDA said, but I shall
21 state the facts. There was no time when we ever
22 made a study or even contemplated making a study of
23 the occupation of Outer Mongolia.

24 Q Mr. Witness, in paragraph 2 of your affi-
25 davit you say that it was necessary to study the

1 administration of occupied areas in peace time
2 parallel with the drawing up of the plans of opera-
3 tion. Tell us, did not the need for that arise for
4 Japan at the beginning of July, 1941, because on
5 June 22, 1941, Germany attacked the Soviet Union?

6 A Is there something more to the question?
7 I only heard part of it.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE PRESIDENT: Repeat the full question.

(Whereupon, the Japanese court reporter read.)

A I understand. Now I shall divide my answer into two parts. Part 1: What I state in my affidavit is what I heard, not what I knew, or what I thought.

Now, as to the second part of my reply. The question of occupation, that is to say, in Soviet territory as well as in North Manchuria as an actual question had profound relationship with the commencement of the war between Germany and the Soviet Union, and with regard to this I should like to make an explanation.

Q Yes, tell us.

A I think it was the fourth or fifth day after the commencement of the war between Germany and the Soviet Union, I and the chief of the Russian Section of the General Staff Office were called to the room of the Chief of the General Staff, SUGIYAMA, and the vice-chief. At that time I was an officer attached to the Russian Section of the General Staff Office. The Chief of the Army General Staff addressed the following two questions to us: The first question was with regard to the prospects of the German-Soviet war from the standpoint of those who were students of Russian

1 affairs.

2 THE MONITOR: Making a study of Russian
3 affairs.

4 A (Continuing) The second question was with
5 respect to the possibility of any threat or danger from
6 a very broad standpoint, both from the standpoint of
7 the Kwantung Army and from the standpoint of Japan as
8 a result of the commencement of war between Germany
9 and Russia.

10 Q Mr. Witness, tell us, was the transfer of
11 troops from Japan to Manchuria in July 1941 in con-
12 nection with the outbreak of the Soviet-German war a
13 casual coincidence, as may be inferred from your replies?

14 A It was my desire to convey what knowledge I
15 have as a staff officer to the Tribunal for their
16 reference as an intelligence officer with regard to
17 this question.

18 Q I request that the witness give exact replies
19 to my questions.

20 A Not being the chief of the Army General Staff
21 nor the vice-chief nor the chief of operations, I am
22 in no position to say whether it was a coincidence or
23 not.

24 THE PRESIDENT: Whether it is casual or not,
25 I think was the question. You used the expression

"casual," Colonel.

1 COLONEL IVANOV: May I continue, your Honor?

2 THE PRESIDENT: Yes.

3 Q Mr. Witness, are you aware of the fact that
4 in July 1941 a great number of Japanese soldiers were
5 transferred from Japan to Manchuria?

6 A May I have the date repeated?

7 Q July 1941.

8 A That I do not know.

9 Q Mr. Witness, were you interrogated by the
10 prosecution on October 6, 1947?

11 A Yes, I was.

12 Q Mr. Witness, when you were interrogated by
13 the prosecution on that date, didn't you reply that
14 when you were en route to the Kwantung Army you saw
15 with your own eyes that the troops were being transferred
16 from Japan to Manchuria?

17 THE MONITOR: To leave from Japan to Manchuria.

18 A That was not in July. I was referring to
19 August.

20 Q So now you are ready to confirm that you were
21 an eyewitness of the transference of Japanese troops
22 from Japan to Manchuria in August, and that the trans-
23 ference of troops continued in August?

24 A Well, I do not know whether it was a
25

1 continuance or not, but troop transfer was clearly
2 being made when I made the trip.

3 Q Mr. Witness, do you continue to contend that
4 in the summer of 1941, as you say, there was a real
5 danger for Japan to become an object of attack on the
6 part of the Soviet Union?

7 A It was my desire to narrate to this Tribunal
8 the reply I made to the questions addressed to us by
9 the chief of the Army General Staff and the vice-chief
10 of the Army General Staff. But you, Mr. Prosecutor,
11 have not given me the opportunity, and, therefore, I
12 have had no chance to contend.

13
14
15
16
17
18
19
20
21
22
23
24
25

OGOSHI

OGOSHI

CROSS

37,1

1 att
2 83
3 op
4 w
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

L
e
e
r
&
W
o
l
f

1 Q Mr. Witness, I have to repeat my request
2 that you give exact replies to the questions that
3 are put to you by me as a representative of the
4 prosecution. Please answer briefly the question that
5 I have just asked you, if you can do it.

6 A Well, would it be sufficient if I told
7 you the reply that I gave to the Chief of the Army
8 General Staff at that time?

9 THE PRESIDENT: We do not know what you told
10 the Chief of the Army General Staff. Just answer
11 the questions simply. If you already told the Army
12 General Staff that, you may add that you did so.

13 THE WITNESS: I understand.

14 A (Continuing) Point 1: Although there is
15 only a slight possibility of Manchukuo being attacked
16 by the Soviet Union, the presence of possibilities
17 cannot be overlooked.

18 Point 2: Taking a long view of the situation,
19 an attack from the Soviet Union will surely come and
20 therefore we on our part must be prepared for such an
21 eventuality.

22 Q Mr. Witness, were you aware of the position
23 of the Soviet Union in the west in July and August
24 1941 or you knew nothing about that?

25 A I was aware.

L
e
e
f
f
e
r
&
W
o
l
f

1 Q Mr. Witness, I have to repeat my request
2 that you give exact replies to the questions that
3 are put to you by me as a representative of the
4 prosecution. Please answer briefly the question that
5 I have just asked you, if you can do it.

6 A Well, would it be sufficient if I told
7 you the reply that I gave to the Chief of the Army
8 General Staff at that time?

9 THE PRESIDENT: We do not know what you told
10 the Chief of the Army General Staff. Just answer
11 the questions simply. If you already told the Army
12 General Staff that, you may add that you did so.

13 THE WITNESS: I understand.

14 A (Continuing) Point 1: Although there is
15 only a slight possibility of Manchukuo being attacked
16 by the Soviet Union, the presence of possibilities
17 cannot be overlooked.

18 Point 2: Taking a long view of the situation,
19 an attack from the Soviet Union will surely come and
20 therefore we on our part must be prepared for such an
21 eventuality.

22 Q Mr. Witness, were you aware of the position
23 of the Soviet Union in the west in July and August
24 1941 or you knew nothing about that?

25 A I was aware.

1 COLONEL IVANOV: Your Honor, I call the
2 attention of the Tribunal to exhibits 834, 835 and
3 836. These exhibits establish the fact that the
4 operations plans against the Soviet Union in 1941
5 were offensive and aggressive.

6 Q Mr. Witness, did the draft plan of the
7 military administration of occupied areas, which was
8 drawn up by the Kwantung Army Headquarters with your
9 participation, include the following six points:
10 Administration, maintenance of peace and order,
11 organization of industries, circulation of currencies,
12 communication and transportation?

13 A Yes, I think such items were included.

14 Q Mr. Witness, was this plan sent in 1942
15 by the Kwantung Army Chief of Staff to the Vice-Chief
16 of General Staff with the knowledge of the Commanding
17 General of the Kwantung Army?

18 A To the Vice-Chief of the Army General Staff
19 from whom?

20 Q By the Kwantung Army Chief of Staff with the
21 knowledge of General UMEZU, Commanding General of
22 the Kwantung Army.

23 A As I have stated in my affidavit, it was
24 sent for purposes -- for informational and referential
25 purposes and with regard to the sending of this document,

1 I reported to Commanding General UMEZU. It was
2 nothing so formal or anything so important as just
3 referred to by the Russian prosecutor.

4 THE INTERPRETER: The witness just used
5 some Russian term used by the Russian prosecutor
6 meaning "confirmed" or something of that nature.

7 A (Continuing) The plan was forwarded only
8 for reference purposes as data and that was all.

9 Q Did you and Major-General IKEDA, by TOJO's
10 order and with the knowledge of UMEZU under whose
11 direct command you were, go to the South Seas area
12 to study the occupation regime for the purpose of
13 using it for the further study of the occupation
14 regime of Soviet territories?

15 A As I have indicated before, there were three
16 categories to the study assigned to us and it was our
17 purpose to take advantage of the experience gained
18 in the occupation of new areas.

19 THE INTERPRETER: Slight correction: "The
20 purpose was to reflect and to utilize the policies,
21 measures and experiences gained in the occupation of
22 newly acquired occupied areas."

23 Q Mr. Witness, did you meet Vice-War Minister
24 KIMURA in Tokyo before the trip and did you receive
25 from him any instructions in connection with that trip?

1 A I have no recollection, but I do not think
2 there was such an occasion.

3 Q Did you and IKEDA study the occupation
4 regime established by the Japanese Army in Malaya,
5 Sumatra, Celebes, French Indo-China, the Philippines,
6 Thailand and Burma?

7 A There was nothing of the kind existing in
8 French Indo-China or Thailand.

9 Q Mr. Witness, I haven't asked you whether it
10 existed or not. I asked you whether you visited
11 those areas and whether you studied the occupation
12 regimes there. Will you please answer my question
13 exactly?

14 A I beg your pardon. Studies were made where
15 occupation administration was being carried out.
16
17
18
19
20
21
22
23
24
25

Q Mr. Witness, tell us, were you and IKEDA in those countries which I have mentioned?

A What were the countries you referred to; Malaya was that one of them? I went to Malaya, stopped over in French Indo-China over night, stayed two nights in Thailand, one night in Rangoon, about five or six days in Java. Well, that just about covers everything.

Q When you IKEDA returned to Tokyo, you reported to Vice War Minister KIMURA about the results of your trip, wasn't that so?

A No reports were submitted.

Q Do you know, Mr. Witness, that on his return to Singking, General IKEDA reported about the results of his trip to the Commanding General, UMEZU?

A Oh, I think the matter was brought up, but I do not think there was anything like a formal report.

Q Mr. Witness, is this assertion made by the witness IKEDA, under oath, correct? I am going to quote from the affidavit: "After the military administration plan was forwarded to the Army General Staff Office, the Kwantung Army Headquarters received orders from War Minister TOJO to the effect that a study should be made of administration of occupied territories to be carried out in the South Seas area, with the object of utilizing the study of administration of occupied Soviet

territories." And I quote further: "With this as the
1 object, I, who was then a major-general, and Lieutenant
2 Colonel OGOSHI departed in May, 1942, for the South Seas
3 area which was under Japanese occupation, with the
4 approval of UMEZU, Commander of the Kwantung Army."

5 I ask you once more, Mr. Witness, is this
6 assertion made by IKEDA correct or not?

7 A Very inaccurate and very much over-exaggerated.

8 Q Mr. Witness, can you explain to us what would
9 have been the reason of the witness IKEDA giving over-
10 exaggerated replies to the question? Why was he
11 interested in doing that?

12 A Not being IKEDA, I don't know.

13 Q Mr. Witness, is the second assertion of IKEDA
14 correct? I am going to quote it from his affidavit:
15 "Prior to our departure, we met the Vice-Chief of the
16 Army General Staff and Vice War Minister KIMURA and re-
17 ceived from them certain instructions which had bearing
18 on our trip."

19 Do you continue to contend that you did not meet
20 KIMURA prior to your departure to the South Seas area in
21 1942?

22 A I testified that I did not remember.

23 Q Maybe this refreshed your memory, Mr. Witness.

24 A The first impression I had -- the first vivid
25

1 impression I had of having seen General KIMURA was when
2 I was transferred from my post as Chief of Staff of a
3 division in Burma to Shonan (Singapore), and at that time
4 General KIMURA came to Burma as Area Army Commander, and
5 looking at his face I felt, "Oh, that is the kind of a
6 face that General KIMURA has," and I had no impression
7 of having seen his features before that time.

8 Q Mr. Witness, I am going to quote one more ex-
9 cerpt and the last one from the affidavit of IKEDA. I
10 quote: "We returned to Japan at the end of June, 1942,
11 after which we again met the Vice-Chief of the Army
12 General Staff and Vice War Minister KIMURA. We made an
13 oral report to them on the results of the trip. After
14 returning to the Kwantung Army Headquarters, I made an
15 oral report on the result of our studies to UMFZU,
16 Commander of the Kwantung Army, and to his Chief of
17 Staff."
18

19 Are these contentions made by IKEDA correct?

20 A It seems to be intermixed with quite a good
21 deal of inaccuracies, or perhaps Lieutenant General
22 IKEDA has done something that I am completely ignorant
23 about, and if I do not know what he has done, I am in no
24 position to say anything about it.

25 THE PRESIDENT: Before we adjourn for luncheon,
we direct every counsel for an accused who is not a

1 lawyer to give the particulars of his career to the
2 General Secretary, together with the name of the accused
3 for whom he appears.

4 No counsel who is not a lawyer may appear at the
5 lectern to argue any question of law or to argue any
6 question of fact without the special permission of the
7 Tribunal. If he is not a lawyer and appears at the
8 lectern, he must state the fact.

9 We will adjourn until half past one.

10 (Whereupon, at 1200, a recess
11 was taken.)

12 - - -
13
14
15
16
17
18
19
20
21
22
23
24
25

AFTERNOON SESSION

K
a
p
l
e
a
u
&
K
n
a
p
p1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Colonel Ivanov.

S U M I H I S A O G O S H I, called as a witness

on behalf of the defense, resumed the stand and

testified through Japanese interpreters as follows:

COLONEL IVANOV: With the Tribunal's permission

I will ask the present witness only two questions.

BY COLONEL IVANOV (Continued):

Q Please, Mr. Witness, give brief answers to the questions I am going to ask you now.

Do you know, Mr. Witness, that the Fourth Section of the Iwantung Army Headquarters dealt with the affairs of Manchukuo?

A Yes, you are right.

Q Do you know that in the subversive activity in the rear of the Soviet Army in wartime as well as in peacetime was engaged the special service organ in Harbin, and that that was its permanent duty?

A During the time I was connected, such subversive activities as referred to by you were strictly prohibited.

COLONEL IVANOV: Your Honor, concluding the

1 cross-examination of this witness, I call the attention
2 of the Tribunal to exhibits 3371 and 674, and also to
3 pages 31,933, 31,934 and 36,946 of the transcript.

4 In connection with the last reply given by the
5 witness, I invite the Tribunal's attention to exhibits
6 737, 738, 739 and 740.

7 Besides, I must make the following correction:

8 Before the noon recess, in the course of the
9 cross-examination, I referred to exhibits 834, 835 and
10 836, and said that they outlined the plan for 1941, but
11 I should have mentioned not only the year 1941, but also
12 the years 1942 and 1943; that is to say, the whole period
13 when ~~in the Kwantung Army Headquarters was functioning~~
14 the Fifth Section which was engaged in the study of the
15 occupation regime for Soviet territories.

16 In the course of cross-examination I quoted
17 prosecution's document No. 3329. This is the affidavit
18 of the witness IKEDA, who will be called in rebuttal.

19 That concludes my cross-examination, your
20 Honor.

21 THE PRESIDENT: Major Blakeney.

22 MR. BLAKENEY: I assume that it is proper to
23 request that in the usual way the affidavit of IKEDA,
24 upon which cross-examination was based, should at this
25 stage be marked for identification, and I do request it.

THE PRESIDENT: Colonel Ivanov.

COLONEL IVANOV: I offer for identification prosecution document No. 3329, the affidavit of the witness IKEDA.

CLERK OF THE COURT: Prosecution document 3329 will receive exhibit No. 3731 for identification only.

(Whereupon, the document above referred to was marked prosecution exhibit No. 3731 for identification.)

MR. BLAKENEY: I have a few questions in re-examination.

REDIRECT EXAMINATION

BY MR. BLAKENEY:

Q You stated, Mr. Witness, that in your conversation with the Chief of the General Staff, you told him that there was, I believe you said, not much but some danger of a Soviet attack on Japanese forces. Now, will you please give to the Tribunal the explanation in connection with that and its bearing on this military administration study work which you gave to the General Staff on that occasion?

THE PRESIDENT: Colonel Ivanov.

COLONEL IVANOV: Your Honor, the prosecution objects to this question as it is beyond the scope of the affidavit. In the course of the cross-examination,

1 I tried as much as possible to avoid those questions
2 which on his own initiative were raised by the witness.

3 MR. BLAKENEY: I think this question merely
4 asks for the remainder of the matter on which he stated
5 part under cross-examination.

6 THE PRESIDENT: He wasn't asked to give this
7 particular answer.

8 MR. BLAKENEY: He started, if your Honor please,
9 to relate the conversation between himself and the
10 General Staff, and was stopped midway.

11 THE PRESIDENT: He wasn't asked to give it, nor
12 did the question involve the giving of such an answer.
13 I did tell him that if he would like to say what he had
14 already told the General Staff, what he was asked about,
15 he could say so.

16 The objection is upheld and the question dis-
17 allowed.

18 BY MR. BLAKENEY:

19 Q Also in cross-examination, Mr. Witness, you
20 mentioned that the duties of the Fifth Section of the
21 Kwantung Army included study of military administration
22 for territories of the USSR and also Manchurian terri-
23 tories.

24
25 Now, please state in what manner the administra-
tion of Manchurian territories became the concern of the

Fifth Section of the Kwantung Army.

1
2 A That is because a Soviet advance was thought to
3 be a possibility.

4 Q Assuming that a Soviet advance occurred, in
5 what manner would the Kwantung Army then be concerned
6 with this administration of Manchurian territories?

7 A In connection with the administration of Man-
8 churian territory we conducted studies on two points:
9 first, regarding territory which might be occupied by
10 the Soviet Army; second, territory which the army,
11 because of the necessity of conducting military opera-
12 tions in some area in cases where the army would take
13 over the military administration of such areas -- our
14 army. Items considered in connection with these two
15 points were sent to the First and Fourth Sections for
16 their information. As to whether these were actually
17 to be executed or not, that was a matter to be decided
18 by the First or the Fourth Section, respectively.

19
20 That is what we thought. By "executed" or
21 "decision," of course, I meant in so far as it involved
22 the work of a staff officer.

23

24

25

1 Q Did the instructions to the Fifth Section
2 instructing it to carry out a study of the subject of
3 military administration of occupied territories specify
4 whether such administration was to accompany offensive
5 operations or otherwise?

6 A No specific instructions were given.

7 Q When the tentative plan on this subject was
8 completed, around March, 1942, did you personally
9 deliver it to the Commander in Chief of the Kwantung
10 Army?

11 A I went to the Commander with General IKEDA, and
12 telling him that such and such a report had been drawn
13 up, submitted the book to him.

14 Q Did you inform the Commander in Chief that it
15 was a tentative study only?

16 A I told him that these were data comprising a
17 tentative plan to be submitted to the First Section
18 and also to the Army General Staff, and that whether
19 this plan was to be adopted and executed or not was
20 up to the Army General Staff and to the First Section
21 to decide.

22 Q And what did the Commander in Chief do with the
23 plan, if you know?

24 A The Commander in Chief asked us to confirm
25 that this plan was not one to be executed or decided

1 upon immediately, and I replied, "Yes, of course
2 this plan is merely submitted as reference and is to
3 be sent to the First Section and to the Army General
4 Staff.

5 Q Did he read it in your presence?

6 A No, he did not read it; he merely glanced at
7 the cover.

8 MR. BLAKENEY: That concludes my re-examina-
9 tion.

10 I ask that the witness be excused on the usual
11 terms.

12 THE PRESIDENT: He is excused accordingly.

13 (Whereupon the witness was excused.)

14 MR. BLAKENEY: I now offer in evidence defense
15 document No. 2975, being a certificate by the Chief
16 of the Archives Section of the First Demobilization
17 Bureau concerning the non-availability of certain
18 documents referred to in the testimony of witnesses
19 heretofore introduced.

20 THE PRESIDENT: Admitted on the usual terms.

21 CLERK OF THE COURT: Defense document 2975 will
22 receive exhibit No. 3732.

23 (Whereupon, the document above
24 referred to was marked defense exhibit 3732
25 and received in evidence.)

1 MR. BLAKENEY: It is unnecessary, I believe,
2 to read it.

3 And lastly, I offer in evidence defense
4 document No. 2976, being another similar certificate.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Defense document 2976
7 will receive exhibit No. 3733.

8 (Whereupon, the document above
9 referred to was marked defense exhibit
10 3733 and received in evidence.)

11 MR. BLAKENEY: It likewise I shall not read.
12 That concludes my presentation of the evi-
13 dence in the Soviet phase.

14 THE PRESIDENT: Major Furness.

15 MR. FURNESS: If the Court please, I wish to
16 make a reservation of one witness in the Soviet phase.
17 His affidavit has been drafted for more than three
18 days. He normally visits this building once a day,
19 and he has not been since then. I have done my best
20 to get in touch with him and believe he will be in
21 sometime today.

22 THE PRESIDENT: You say three days. That would
23 include Saturday and Sunday, of course?

24 MR. FURNESS: No, your Honor.

25 THE PRESIDENT: Mr. Roberts.

1 MR. ROBERTS: May it please the Court, there
2 is a map of Shanghai, defense document 2948, which
3 I intend to put in evidence for the guidance of the
4 Court. I have just been informed that it has not been
5 generally distributed as I thought it was. I would
6 like to reserve the right to present this document
7 tomorrow morning.

8 THE PRESIDENT: Major Blakeney.

9 MR. BLAKENEY: The Tribunal may remember that
10 in the case of the defendant TOGO I had one witness
11 remaining, Admiral OKADA. The prosecution have now
12 stated to me that they are willing to waive his cross-
13 examination, and I therefore assume that I may proceed
14 in the usual way to read the affidavit. I therefore
15 wish to offer it in evidence at this time.

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Defense document 2746
18 will receive exhibit No. 3734.

19 (Whereupon, the document above
20 referred to was marked defense exhibit 3734
21 and received in evidence.)
22
23
24
25

G
r
e
e
n
b
e
r
g
&
Y
e
l
d
e
n

1 MR. BLAKENEY: I read the exhibit, omitting
2 the formal parts:

3 "1. I came to know Mr. TOGO Shigenori around
4 1934, when I was Premier and he was Director of the
5 European-Asiatic Bureau of the Foreign Ministry. Since
6 then I have talked with Mr. TOGO on various occasions,
7 and exchanged views on various problems. Especially
8 after he became Foreign Minister in the TOJO Cabinet
9 in October 1941 there was frequent contact between him
10 and me directly and indirectly not only while he was
11 Foreign Minister but even after he resigned from the
12 ministership. In April 1945, when Mr. TOGO was entering
13 the SUZUKI Cabinet, he called on me to explain his
14 position and requested my opinion.

15 "2. At the time of the London Naval Disarma-
16 ment Conference of 1934-1935 I was Premier and Mr. TOGO
17 was Director of the European-Asiatic Bureau of the
18 Foreign Ministry. I learned at that time from the
19 officers concerned that Mr. TOGO was opposed to the
20 position of the Navy and carried on heated arguments
21 with the Navy over such problems as the common upper
22 limit, the abrogation of the Washington Treaty, and
23 the exchange of information on naval shipbuilding.

24 "3. Toward the end of October 1941, Foreign
25 Minister TOGO urged that, as the opinion of the Navy

1 was unyielding and it was likely that a Japanese-
2 American war would ensue if things were left alone,
3 I as a veteran of the Navy should contribute my
4 efforts promptly to moderate the opinion of the Navy.
5 Thereupon, I immediately requested Admirals KOBAYASHI
6 Seizo and TOYODA Teijiro to come to my house, and
7 conferred with them. I do not remember the result.

8 "4. I have long recognized the importance of
9 diplomatic affairs, and it has been my belief that
10 the choice of Foreign Minister was the most important
11 next to that of Premier. Especially after the con-
12 clusion of the Tripartite Alliance in September 1940,
13 it was my sincere desire to have a Foreign Minister
14 who was a lover of peace and would be earnest in
15 negotiations with the United States, in order that we
16 might go through that critical period without becoming
17 entangled in the war. After deliberation I came to the
18 conclusion that Mr. TOGO was the best, and I talked
19 about it to my friends and acquaintances. Especially
20 in October 1941, immediately before the establishment
21 of the TOJO Cabinet, I told Lord Keeper KIDO this. I
22 recommended Mr. TOGO because I had known that Mr. TOGO,
23 since the time when he was Director of the European-
24 Asiatic Bureau, had entertained moderate opinions and
25 favored international cooperation over such matters

1 as European and American questions, the China question
2 and the disarmament problem; that after he became
3 Ambassador he had been opposed to the strengthening
4 of the Anti-Comintern Pact or the Tripartite Alliance,
5 even though he was stationed in Germany; and that
6 after he had returned from the Soviet Union he had
7 been keenly interested in the success of the Japanese-
8 American negotiations. When the TOJO Cabinet was
9 organized, Mr. TOGO insisted that he could not accept
10 the post of Foreign Minister unless the new Cabinet
11 would strive for the success of the Japanese-American
12 negotiations. He resigned from the post on account of
13 his opposition to the establishment of the Greater
14 East Asia Ministry. Thereafter it was his sincere
15 desire that the war should be terminated as soon as
16 possible, and when the SUZUKI Cabinet was formed, he
17 contended strongly for the prompt ending of the war
18 and entered the cabinet on that condition. These
19 instances show how intense is Mr. TOGO's aspiration
20 for peace.

21
22 "5. After Mr. TOGO resigned from the Foreign
23 Ministership in the autumn of 1942, he often related
24 to me that the policy of war direction of the TOJO
25 Cabinet was not proper and that therefore the continuation of the cabinet was not in the interest of the

country nor favorable for the termination of the war."

1 THE PRESIDENT: Mr. Yamaoka.

2 MR. YAMAOKA: I understand that Mr. Carr
3 wishes to make a statement to the Tribunal.

4 THE PRESIDENT: Mr. Comyns Carr.

5 MR. COMYNS CARR: May it please the Tribunal,
6
7 it has been agreed by prosecution and defense that
8 with reference to the request made for the Tribunal
9 to take judicial notice of certain portions of the
10 Japanese criminal code, it will not be necessary to
11 press that request. It is an established principle
12 of all courts that the court takes cognizance of the
13 law that it is administering and of the sources of
14 that law. In taking cognizance of the law which it is
15 administering and its sources the court does not
16 require this law or its sources to be proved in the
17 course of giving evidence or to be judicially noted
18 in the course of giving evidence. The customary pro-
19 cedure in ascertaining its own law is for the court
20 to take cognizance of such law of its own motion and
21 to receive the aid of counsel on both sides in the
22 course of argument by way of citation. This Tribunal
23 is administering international law and it, therefore,
24 as the Tribunal has stated, takes cognizance of that
25 law without requiring it to be proved or judicially

1 noticed at the time of giving evidence, This Tribunal,
2 like any other court, may take cognizance of the
3 sources of international law it is administering.

4 Two of the sources of international law are treaties
5 and the statements of recognized text writers. These
6 are not established by proof or judicial notice in
7 the course of giving evidence. Like any other legal
8 authority, they are brought to the court's attention
9 by citation. A third well recognized source of inter-
10 national law is the legal principles commonly recog-
11 nized by the consensus of the various nations of the
12 world. To ascertain these common principles, an
13 international tribunal takes cognizance of the
14 national laws which go to make up the common principle.
15 This is done by the court on its own motion with the
16 aid given to it by counsel on both sides by way of
17 citation to the statutes--

18
19 MR. CUNNINGHAM: Just a minute, I would like
20 to object, your Honor--

21 THE PRESIDENT: Finish that statement, please.

22 MR. COMYNS CARR: This is done by the court
23 on its own motion with the aid given to it by counsel
24 on both sides by way of citation to the statutes,
25 decisions and recognized text writers on the law of
the particular nation.

1 MR. CUNNINGHAM: At the end of that suggestion
2 I would like to object to any further--

3 THE PRESIDENT: I directed Mr. Carr to
4 complete that statement. We can be trusted to hear
5 all he has to say.

6 MR. COMYNS CARR: It should be noted that
7 this is not a case of a court taking cognizance of
8 foreign law. It is taking cognizance of one of the
9 sources of its own law in order to ascertain its own
10 law.

11 Even if the use of national laws of the
12 various nations could be regarded as analagous to the
13 use of foreign law by a national court, the same pro-
14 cedure would be followed. It is a common practice in
15 all of the highest courts in the Anglo-American legal
16 system, and we believe in the highest courts of other
17 systems, where the foreign law is not being used to
18 establish an evidentiary fact in the case but as an
19 aid to the ascertainment of the law it is administering,
20 for the court to cite and to have cited to it the
21 decisions of foreign jurisdiction as persuasive
22 authority. The reports of the Supreme Court of the
23 United States, the House of Lords and the High Court
24 of Australia shew that those courts in determining
25 their own law often cite cases from other jurisdictions

as persuasive authority.

1 Therefore, both the prosecution and defense
2 have agreed, if the Tribunal approves, that in render-
3 ing aid to the Tribunal in ascertaining the law of
4 the case that both sides shall be free to cite to the
5 Tribunal the appropriate laws, decisions and recognized
6 legal authorities of any national jurisdiction,
7 including Japan.
8

9 THE PRESIDENT: We treat that as a submission
10 of law by counsel for the defense and counsel for the
11 prosecution. There may be some dissent among the
12 counsel for the defense. We will be only too happy
13 to hear any contrary submission.

14 Mr. Cunningham.
15
16
17
18
19
20
21
22
23
24
25

1 MR. CUNNINGHAM: Your Honor, today is the
2 first time I have heard any inkling of such an agree-
3 ment between any counsel in this case. I cannot go
4 through Mr. Carr's statement, but I disagree with
5 about seven of his premises on this proposition just
6 from hearing what he has said here in open court.
7 I will just take one example: The statement that he
8 makes, far reaching and wide sweeping, that this Tri-
9 bunal or any other international tribunal shall take
10 official or judicial cognizance of the existence of
11 any state of international law; that is not a proper
12 statement of the law or of the fact. I certainly do
13 not agree that this Court can take judicial notice
14 of the existence of any body of international law be-
15 cause international law does not exist as a body. The
16 law in this case is provable as a fact like any other
17 fact. That was my contention in my individual case,
18 and that is still my contention, and I am quite sure
19 that is sound law.

20 That is just the first example. There is an
21 attempt on the part of academicians and theorists to
22 incorporate international law, but it is not a fact
23 today, and probably in our time it will not be a fact.
24 That is just one example. I cannot recall all the
25 points that he made, but I, for one, will not be

1 bound by any agreement that he has offered to this
2 Tribunal as an agreement between counsel.

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: Your Honor, I, of course,
5 was unaware, when I read this statement, that there
6 was any one of the defense counsel who had not entered
7 into the agreement which I have recited. I, neverthe-
8 less, ask the Tribunal to give effect to that agree-
9 ment as not only a matter generally agreed between
10 counsel but also a correct statement of the position.

11 THE PRESIDENT: We cannot treat it as any
12 more than a submission of law.

13 Mr. Logan.

14 MR. LOGAN: This statement arose out of the
15 submission I made several days ago on Japanese law of
16 conspiracy. The statement was prepared by Mr. Horwitz
17 and submitted to me. We had a meeting of defense
18 attorneys at noontime, and, unfortunately, Mr. Cunning-
19 ham was not there, but the rest of us were there and
20 had agreed to it.

21 Now, before the defense rests, we would like
22 to have some indication from the Tribunal with respect
23 to whether or not we can argue Japanese law of con-
24 spiracy along with other national law or whether it
25 would be necessary for us to prove it or whether the

1 Tribunal will take judicial notice of it as I sub-
2 mitted the other day. If not, we will have to rest
3 with that reservation.

4 THE PRESIDENT: If the Tribunal decides not
5 to act on the agreement, I have no doubt they will
6 give you liberty to proceed to prove the law of Japan
7 in the usual way, but I do not anticipate any dis-
8 agreement. By "in the usual way" I mean it is a
9 matter of a question of fact that would be proved in
10 another national court.

11 MR. LOGAN: We will accept that, your Honor.

12 THE PRESIDENT: Captain Brooks.

13 MR. BROOKS: If the Tribunal please, I was
14 at this meeting, and I disagree as to the method set
15 out in this agreement, reserving my right to comment
16 on the premises as set forth by the prosecution. Some
17 of them I disagree with. There may be others that
18 have agreed with the method set forth for handling
19 these matters in order to save time for this Tribunal,
20 but I want the Tribunal to understand that that is my
21 position.

22 THE PRESIDENT: Mr. Levin.

23 MR. LEVIN: Mr. President, I was not at
24 this meeting this noon; and, as I understood it, there
25 was to be a discussion in relation to whether or not

1 the conspiracy law of Japan would be admitted as pro-
2 posed by Mr. Logan several days ago.

3 There are a number of things in the prelimin-
4 ary statement read by Mr. Carr with which I do not
5 agree. Nevertheless, I am in accord with the con-
6 cluding statement to the effect that the decisions
7 of courts of various countries, the statements of
8 publicists and statements of men in high official
9 positions from time immemorial, which constitutes
10 international law, may be cited both by the defense
11 and by the prosecution in connection with their sub-
12 mission of this case. And I desire, as part of the
13 evidence in this case or the record, that the state-
14 ment made to the Court several days ago by Mr. Logan
15 as to the law of conspiracy in Japan be accepted;
16 and, if that is not accepted, that the Court give us
17 the opportunity to offer evidence in relation to
18 that point.

19 THE PRESIDENT: Mr. Yamaoka.
20

21 MR. YAMAOKA: Mr. President and Members of
22 the Tribunal, subject to the reservations just made,
23 I wish to state that the defense has no further
24 evidence at this time.

25 (WHEREUPON, THE DEFENSE
RESTED.)

1 MR. COMYNS CARR: May it please the Tribunal,
2 we now come to offer evidence in rebuttal and, first
3 of all, desire to refer the Tribunal to certain
4 passages in which indications have been given as to
5 the type of evidence which will be permitted or even
6 required under that heading.

7 At page 19,372 the Tribunal decided, after
8 argument, that actually without opposition evidence
9 in rebuttal would be permitted. On a number of
10 occasions, examples of which follow, the Tribunal
11 expressed the view that, where a question in cross-
12 examination was based upon documentary or other evi-
13 dence which, in the case of a document, could not be
14 there and then exhibited because the witness under
15 cross-examination could not or would not identify it,
16 the Tribunal would not only permit but expect the
17 prosecution to tender that evidence at a later
18 stage; for instance, at page 22,030, during the
19 cross-examination of the witness KAWABE, Torashiro,
20 again during the same cross-examination at page 22,048,
21 and again at page 22,058.

22 I now offer in evidence IPS document No.
23 1634-M, "Plan for Disposing of Incident," on which
24 appears a marginal note "Decided on August 7 at the
25 Office of Premier by Foreign, Army and Navy Ministers"

1 and their signatures. Part of the document is dated
2 "Evening, 6th August, 1937."

3 The witness HORINOUCI in his affidavit,
4 exhibit 2360, paragraph 11, page 29,692, asserted
5 that there was a decision taken on or about August 5
6 or 6 by these ministers. He was cross-examined about
7 it and, on pages 29,762-4, maintained that the docu-
8 ment was burnt. He purported to give its contents.
9 The document which we have now found appears to be
10 the document to which he was referring, but the con-
11 tents of it are different from those described by him.
12 An important point in it is that Shanghai was contem-
13 plated as one of the principal areas of military
14 operations two days before the Shanghai Incident
15 occurred, which was alleged to be due to the so-called
16 murder of Naval Lieutenant OYAMA. Questions based on
17 this document were also put to the witness KAWABE at
18 pages 22,029-31 and denied by him.
19
20
21
22
23
24
25

M
O
R
S
E
&
W
H
A
L
E
N

1 THE PRESIDENT: Major Furness.

2 MR. FURNESS: If the Court please:

3 The defense objects to the tender of rebuttal
4 evidence by the prosecution. Article 15 D of the
5 Charter provides, "The prosecution and the defense may
6 offer evidence. . ." There is no provision for rebuttal
7 evidence in the Charter and in our submission, the
8 Tribunal should not and, in fact, does not have the
9 power to go beyond its terms. The Charter further pro-
10 vides, in Article 13 A, that the Tribunal shall "adont
11 and apply to the greatest possible extent expeditious" --
12 a few words omitted -- "procedure" and in Article 12A
13 that it shall "confine the trial strictly to an expe-
14 ditious hearing of the issues raised by the charges."
15 We submit that the prosecution has offered its evidence
16 and closed its case, the defendants have offered their
17 evidence and closed their cases, the issues raised by
18 the charges have been joined and are now closed and
19 that if the trial is to be confined as required by the
20 Charter to an expeditious hearing of the issues raised
21 by the charges the Tribunal must pass to the next phase
22 of the case, that is the summations. For if rebuttal
23 evidence is to be permitted the defense must have the
24 right, if this is to be in any sense a fair trial, to
25 introduce evidence in rejoinder to answer, explain or

1 impeach the evidence offered in rebuttal and the end
2 of the trial would be thus delayed.

3 We realize that the Court has made certain
4 statements with regard to rebuttal evidence but we sub-
5 mit that the question has never been adequately argued
6 or considered and since no evidence at that time was
7 being offered in rebuttal, no final ruling has been
8 made.

9 If the Tribunal, contrary to the terms of the
10 Charter, permits the prosecution to introduce evidence
11 in rebuttal, it is our submission that such evidence
12 should be confined to rebuttal evidence in the strict
13 sense of the term. Such evidence should be admitted
14 only to meet new collateral facts brought out in
15 evidence by the defense such as proof of an alibi,
16 second, on an affirmative plea to meet substantive proof
17 that has been put forward, and third, on any issue for
18 the purpose of impeaching the credibility of defense
19 witnesses. It should not admit evidence of new facts
20 which should have been offered by the prosecution to
21 sustain its burden of proof, and the prosecution has
22 no right in rebuttal to bring in new witnesses or docu-
23 ments to prove such facts nor to repeat, bolster, or
24 strengthen proof already offered. No affirmative plea
25 as in civil cases, such as insanity in a will case or

1 infancy in a case of contract, where the opponent
2 rather than the proponent has the burden of proof has
3 been entered by any of the defendants in this case
4 and so evidence of that second category need not be
5 considered.

6 As to evidence impeaching credibility, we sub-
7 mit that if rebuttal is permitted, it should be confined
8 to statements or actions by a witness inconsistent with
9 his own testimony and to documents, the purport of
10 which is inconsistent with proof of new collateral
11 facts introduced by the defendants in their case in
12 reply. Here again, evidence which should have been
13 part of the prosecution's case-in-chief should not be
14 admitted. But it is evident from the documents already
15 received by the defense and from the cross-examination
16 of defense witnesses that the prosecution is planning
17 to offer such evidence.

18 Various questions have been asked witnesses
19 for the defense regarding statements made by various
20 individual defendants and even third parties, to a
21 person not the witness and in conversations at which
22 the witness was not present. The witness has been
23 asked whether he heard any such statement, has testi-
24 fied that he never heard of it nor knew anything about
25 it, has then been asked whether such statement represented

1 the policy of the accused and has testified that it
2 did not. On one of our first objections the prosecu-
3 tion refused to divulge that they were cross-examining
4 from a writing but later admitted that they were cross-
5 examining from the so-called HARADA Memoirs. The
6 statement has been made that it would later be pro-
7 duced and the Tribunal from the bench has stated that
8 I should know that it would be produced in rebuttal and
9 I stated that I did not wish my silence to be con-
10 strued as admitting it was admissible in rebuttal.
11 Since it is our contention that such evidence, and the
12 HARADA Memoirs are only one example, if admissible,
13 should have been introduced in the prosecution's case-
14 in-chief, it is our submission that it will not be ad-
15 missible in rebuttal. Proof of the policy of these
16 defendants and their acts should have been proved in
17 the prosecution's case-in-chief, not after the defense
18 has closed. If the witness was not present at the
19 conversations, any memory of them recorded by Baron
20 HARADA or Prince SAIONJI or anyone else would not
21 impeach his testimony. The mere fact that the witness
22 testifies as to statements of policy by an accused
23 and then is asked whether if that accused made an in-
24 consistent statement to Baron HARADA this latter state-
25 ment correctly represents the policy of such accused

1 and he denies it, raises no new facts regarding which
2 the prosecution should have the right to present re-
3 buttal evidence. This studied strategy on the part
4 of the prosecution is merely an attempt to raise its
5 case by its own bootstraps.

6 The reason for the general rule that evidence
7 which could have been presented in the presentation of
8 the prosecution's case-in-chief, of facts on which there
9 is already evidence or which merely strengthens such
10 evidence, may not, as a matter of right, be offered
11 in rebuttal is founded on the basic rule of fair trial,
12 which is the only rule of evidence by which I gather
13 the Tribunal admits it is bound. The proponent on its
14 case must present its entire proof; the defense must
15 know what it has to meet in order to prepare and pre-
16 sent its case. To quote from *Spear v. Abbott*, C.C.D.C.
17 Fed. Cases 13,222, "It makes a party show his hand to
18 his adversary, prevents his splitting up his proof and
19 retaining part for reply, and defeats the fraudulent
20 purpose, if such exists, to make evidence to overcome
21 and fit the defense." To permit additional evidence
22 which has not been made necessary by the defense's case
23 in reply, would lend itself to unfair surprise and en-
24 trapment and consequent injustice. It would put the
25 prosecution in a more advantageous position than it would

37,183

1 be in if it presented its case-in-chief during the
2 time assigned to it.
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Besides the basic objection that the defense
2 has the right in all fairness to assume that the case-
3 in-chief is the entire case which it has had to meet,
4 there is the practicable disadvantage which Wigmore
5 on Evidence, Third Edition, paragraph 1873, calls "the
6 interminable confusion that would be created by an
7 unending alternation of successive fragments of each
8 which could have been put in at once in the beginning."
9 For it is universally held in the countries following
10 the Common Law, see Wigmore, Section 1874, and I submit
11 must be the same in any country requiring a fair trial,
12 that the defense has the right to introduce evidence
13 to answer, explain, or impeach the evidence introduced
14 by the prosecution in rebuttal testimony. If the Tri-
15 bunal admits any evidence tendered by the prosecution,
16 not only evidence made necessary by the defendant's
17 reply, but also evidence which should have been part of
18 the case-in-chief, it must be just as liberal in per-
19 mitting the defense to reply by rejoinder or surrebuttal,
20 even though there is no provision in the Charter for
21 this either.
22

23 There is no indication that this material which
24 the prosecution plans to introduce on rebuttal was not
25 available or could not have been found with routine
diligence. The dates of the Certificates of Authenticity

1 on many documents indicate that most of it was in the
2 prosecution's possession long before it closed its
3 case. The manuscript of the HARADA Memoirs which has
4 been referred to many times on cross-examination was
5 one of the first documents delivered to GHQ after the
6 surrender in 1945 and newspaper stories regarding it
7 were published in the same year. Under those circum-
8 stances, there is even less ground for admitting the
9 evidence. The Tribunal has refused to permit the de-
10 fense to introduce evidence in the individual cases
11 which could have been offered in the general phases. In
12 allowing us to offer further evidence in individual
13 phases, it has asked, "Was the evidence available when
14 the phase for the accused was being presented." "Is
15 the evidence to be offered necessary to meet evidence
16 admitted since the case for the accused was closed."
17 "Was any reservation made when the accused closed his
18 case." We submit that the same standards should be
19 applied to the prosecution and this evidence should be
20 rejected. It was available. It should have been offered
21 in the case-in-chief. No reservation was made when the
22 prosecution rested its case.

23 In other words, it is our contention that the
24 prosecution should not, either by design, mistake or
25 inadvertence, have, and continue to have, an unfair

1 advantage. Since the Charter does not provide for any
2 rebuttal, we submit that if the Tribunal has discretion
3 and is to exercise it, it must confine the rebuttal
4 strictly to evidence made necessary by the defense's
5 answer.

6 I think other defense counsel wish to say
7 something.

8 THE PRESIDENT: Mr. Cunningham.

9 MR. CUNNINGHAM: If the Tribunal please, Mr.
10 Carr has suggested that the matter of rebuttal has
11 been suggested here without opposition. I want to
12 call attention to two instances, the only two instances
13 in which the term was used while I was present in
14 court. 37,186

15 I think you will recall I suggested that
16 opposition was made at that time to any mention of
17 rebuttal evidence, and with the suggestion that if they
18 allowed rebuttal evidence that this trial would go
19 on ad infinitum, and that was made in open court.

20 Now, the second time was when you were absent
21 and Judge Cramer was acting as President, and I urged
22 at that time that the issue be met then before the
23 prosecution went to the trouble of preparing rebuttal
24 evidence. But the President announced that we would
25 meet that question when we met it and not decide it

call attention to two instances, the only two instances
in which the term was used while I was present in court.

1 then three or four or five weeks ago.

2 But at that time I registered the most vigor-
3 ous opposition of which I was capable, and I don't see
4 where Mr. Carr gets that statement that the matter has
5 been mentioned without opposition unless he wasn't here
6 on those two occasions. I certainly am now, I was then,
7 and I have been ever since the commencement of this
8 trial against the prolongation unnecessarily of these
9 proceedings. And certainly the prosecution has no right
10 to go forward at this time; they have closed their case.

11 THE PRESIDENT: Mr. Logan.

12 MR. LOGAN: May we have the decision on the
13 general objection and before ruling on this particular
14 document because we have specific objections to it?

15 THE PRESIDENT: We will recess for fifteen
16 minutes.

17 (Whereupon, at 1445, a recess was
18 taken until 1500, after which the proceedings
19 were resumed as follows:)
20
21
22
23
24
25

D
u
d
a
&
S
p
r
e
t

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: May it please the Tribunal.

5 THE PRESIDENT: Before you open I might
6 mention what our British law is about rebuttal as
7 it is contained in Archbold's Criminal Pleading
8 and Practice, 29th Edition, page 203. I know we
9 must follow our Charter, and if it differs from
10 British law the British law must be disregarded.

11 "Whenever evidence has been given by
12 the defense introducing new matter which the Crown
13 could not foresee, counsel for the prosecution may
14 be allowed to give evidence in reply to contradict
15 it. The matter is one within the discretion of the
16 Judge at the trial."

17 That is all I know about rebuttal evidence.

18 MR. COMYNS CARR: May it please the Tribunal,
19 first of all, with regard to the general question as
20 to whether any such evidence should be permitted at
21 all, at page 19,366, as long ago as the 3rd of April,
22 1947, during argument as to a question which I was
23 putting in cross-examination to the witness TAKEDA,
24 your Honor said: "That raises a big question, whether
25 you can tender any further evidence except a document

1 admitted by a witness on cross-examination," and
2 asked whether we would like to have that point argued
3 then and there.

4 THE PRESIDENT: I said, "We have no opinion
5 one way or the other on that, Mr. Carr; but, would
6 you care to have that point argued now?"

7 MR. COMYNS CARR: That is right. Then I
8 presented an argument covering some two pages, which
9 really answers all the general points taken by Mr.
10 Furness at this present time. And then a discussion
11 took place between your Honor and my friend, Mr. Warren,
12 chiefly on the question of the admissibility of
13 certain questions in cross-examination, at the end of
14 which, at the top of page 19,372, Mr. Warren said,
15 "I now understand, your Honor. I am sorry. I mis-
16 interpreted the Court's remark. I think we have been
17 in accord all along." And your Honor said, "But now
18 what we are discussing is the meaning of Article 15
19 of the Charter, the meaning and effect. Apparently,
20 the defense do not contest that you are entitled to
21 give evidence in rebuttal." And then your Honor,
22 after consulting all the Members of the Court, said:
23 "We are of the opinion that evidence may be given in
24 rebuttal by the prosecution."
25

THE PRESIDENT: I said, "I wouldn't rule on

1 it without consulting all the Members of the Court."

2 I said, "I know what my own view is, but I don't know
3 the views of the other Members of the Court."

4 MR. COMYNS CARR: And I simply repeat that
5 argument which I presented then, and ask the Court not
6 to change its decision.

7 THE PRESIDENT: Well, a transcript is cir-
8 culated among all the defense counsel, and my state-
9 ment was that apparently they didn't object to evidence
10 being given in rebuttal. It was never contested until
11 a certain stage was reached.

12 MR. COMYNS CARR: Now, your Honor, with
13 regard to the second part of Mr. Furness's argument,
14 namely, the limits within which it should be confined --

15 THE PRESIDENT: I do not know whether the
16 Members of the Tribunal are going to reverse their
17 own decision yet or will consider doing so.

18 MR. COMYNS CARR: Would the Tribunal wish
19 to deal with that point before I say anything more?
20

21 THE PRESIDENT: Is yours a lengthy argument,
22 Mr. Carr? I do not want to waste time in ascertain-
23 ing the views of the Members whether they will permit
24 argument.

25 You had better complete what you have to
say. Apparently, you have not a great deal to say.

1 You could refer to what you said on the first
2 occasion when you succeeded.

3 MR. COMYNS CARR: Your Honor, I didn't pro-
4 pose to add anything on that general question. The
5 rest of what I had to say was concerned with the
6 second part of Mr. Furness's argument, namely, the
7 limits within which it should be confined, if it is
8 to be allowed.

9 THE PRESIDENT: Now matter which you, the
10 prosecution, could not have foreseen is a British
11 test. I can think of nothing better.
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 MR. COMYNS CARR: Your Honor, what I wanted
2 to say about that is this: There are three types of
3 additional evidence which may, in an ordinary case in
4 an English or American court, be offered by the
5 prosecution at the close of the case for the defense.
6 One is rebuttal in the sense which your Honor has
7 mentioned. The second is evidence of a statement
8 previously made by an accused or other defense witness
9 which has been put to him and which he has in whole
10 or in part denied.

11 THE PRESIDENT: That obviously is something
12 which the prosecution could not have foreseen. The
13 test is the same.

14 MR. COMYNS CARR: Yes. And then sometimes
15 the prosecution is permitted, although rarely, to
16 bring in entirely new matter which has only come to
17 their knowledge after the prosecution case was closed.

18 THE PRESIDENT: Still something the prosecu-
19 tion could not have foreseen: subsequently-discovered
20 facts.

21 MR. COMYNS CARR: Yes. In our submission,
22 it is only in that last case that any right of the
23 defense to answer the rebuttal evidence or additional
24 evidence arises; only when it is new matter. If it
25 is rebuttal in the strictest sense of the term, or if

1 it is impeachment of a witness by a statement which
2 has been put to him, they have already had their
3 opportunity of dealing with those matters, and no right
4 for them to call evidence in surrebuttal, if that is
5 the right word, arises.

6 There is, in this case, a fourth class of
7 matter; namely, certain matters which were opened as
8 part of the case for the prosecution; but, owing to
9 the evidence not being then available, permission was
10 asked and granted by the Tribunal for that evidence
11 to be produced at a later stage when it was available.

12 In our submission, everything which we shall
13 be offering will come within either the first class,
14 strict rebuttal; or the second class, statement
15 previously made by the witness; or the fourth class,
16 special reservation of leave. We are not conscious
17 of an intention to offer anything which would come
18 within the third class, namely, entirely new matter.
19 But we recognize that it is not always easy to draw
20 the line between that which is strictly rebuttal and
21 that which is new matter; and we ask the Tribunal,
22 in considering any particular document, to bear in
23 mind that in a case so vast as this, in which a huge
24 volume of documents, mostly in Japanese, has had to
25 be translated and dissected and new points are

1 constantly raised on both sides in the progress of
2 the case, it is inevitable that some documents should
3 be discovered, or the importance of some already in
4 the physical possession of the prosecution should be
5 realized only at a comparatively late stage.

6 Where we produce a document to contradict
7 a statement made by the accused or one of their wit-
8 nesses, in our submission it properly falls within the
9 character of rebuttal, although it may be true that
10 if we had known of it when we presented our case we
11 would in fact have presented it as part of our original
12 case. I think the Tribunal has already recognized
13 that position in permitting, over objection by the
14 defense, a number of documents to be exhibited in the
15 course of cross-examination of witnesses which those
16 witnesses have identified, although we might have
17 presented them as part of our original case if we had
18 either had them at that time or they had been at that
19 time ready for consideration, let's say, translated and
20 practically available to us, as distinct from merely
21 physically in our possession.

22 There is one other class of matter which
23 will arise in the course of presenting this evidence,
24 and that is, cases where a witness has been called on
25 the part of an accused to give evidence as to the

1 opinions and policy of that accused, clearly not being
2 the best evidence as to the opinions and policy of that
3 accused. In those circumstances, we have cross-
4 examined the witness who professed to be able to state
5 the opinions and policy of the accused as to statements
6 alleged to have been made by the accused contrary to
7 the witness' evidence. We shall submit with regard
8 to those when we come to them, that they should be
9 admitted in rebuttal, although the person to whom we
10 were able to put the question was not the person him-
11 self alleged to have made the statement.

1 THE PRESIDENT: The American practice before
2 military courts is not substantially different from
3 the British in this regard. I refer to Winthrop's
4 Military Law and Precedents, Volumes I and II, page
5 345.

6 MR. COMYNS CARR: I understand that the
7 practice in some other countries is less strict with
8 regard to class of evidence admitted, and of course
9 this Tribunal is not bound by technical rules.

10 THE PRESIDENT: We are bound to give a
11 fair trial and we will not achieve that if we are
12 going to completely disregard these old well-established
13 rules based on justice.

14 MR. COMYNS CARR: I am not asking this
15 Tribunal --

16 In my submission, your Honor, the two prac-
17 tical tests in a trial of this kind and before
18 an international tribunal of this kind are, first of
19 all: is the evidence going to assist the Tribunal to
20 arrive at a true conclusion; and secondly and most
21 important, have the defense been given a fair
22 opportunity of meeting it. Of course all these points
23 will arise on particular documents, but in view of
24 the general remarks made by my friend Mr. Furness on
25 that subject, I thought it right to make those general

remarks in reply.

1 I now again offer in evidence my first
2 document, IPS 1634-M, which I have already explained.

3 THE PRESIDENT: We propose to confer before
4 coming to a decision.

5 Colonel Warren.

6 MR. WARREN: Your Honor, lest the Tribunal
7 be under a misapprehension concerning the argument on
8 the question of cross-examination that counsel referred
9 you to, I made the remarks that he stated I did make.
10 However, prior to having made those remarks, I distinctly
11 recall that your Honor told me in substance, "Colonel
12 Warren, don't commit yourself to any such policy or
13 any such practice." I realize at that time that the
14 Tribunal and I probably were talking about the same
15 thing, but were confused as a result of the different
16 system of procedure, and so stated to the Tribunal.

17 The following morning, I think it was, your
18 Honor returned to the Bench and announced in open
19 court that I had correctly stated the American rule
20 and that you had checked, I think it was Wigmore On
21 Evidence; I am not certain about the authority. The
22 question of rebuttal testimony, if it arose, arose
23 incidentally at that time. And as to whether or not
24 your Honor was speaking about the rule of evidence,
25

1 which I had tried to convince your Honor of, or
2 rebuttal testimony, I never knew. And incidentally
3 I should have inquired but did not.

4 THE PRESIDENT: I would have to refresh my
5 memory from the transcript. I have no independent
6 recollection.

7 MR. WARREN: 'I haven't had time to leave
8 the courtroom since then to get the following day's
9 record, but I am positive that is the occasion and I
10 shall get it if your Honor desires it.

11 Your Honor, I just want to clarify that
12 point and I think perhaps some other counsel desires
13 to argue the motion proper. But I will get the
14 citation and get the record.

15 THE PRESIDENT: We will look it up in any
16 event.

17 MR. CUNNINGHAM: Your Honor made a suggestion
18 that no objection was made at the time you ruled or
19 expressed an opinion. Well, I want to make one
20 observation; that I was not here in court the day
21 that ruling was made, but the next time the matter
22 came up while I was here and the following time that
23 the matter came up while I was here I expressed
24 opposition to it, so I should not be bound by what
25 happens when I have had no opportunity to make an

1 objection at the time.

2 MR. WARREN: Your Honor, I now have that
3 section -- Mr. Carr had it -- and that will be found
4 on page 19,376 and 19,377 of the record. Your Honor
5 made some remarks concerning the subject we had in
6 mind, which was the cross-examination, and at the end
7 of those remarks stated that "I should make it clear
8 that Colonel Warren did state correctly the American
9 practice which differs from the British."

10 THE PRESIDENT: But what bearing has this
11 on the rebuttal evidence question?
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 MR. WARREN: Well, that is the point, your Honor
2 It wasn't on rebuttal evidence, but I think Mr. Carr and
3 I thought that the Tribunal thought it was with reference
4 to rebuttal evidence, and if it arose, it arose incident-
5 ally to the other argument.

6 THE PRESIDENT: It was about tendering a docu-
7 ment for identification.

8 MR. COMYNS CARR: Yes, your Honor. That is just
9 what I was about to say.

10 THE PRESIDENT: Well, we will consider this.

11 I am sorry. Mr. Logan.

12 MR. LOGAN: If the Tribunal please, this might
13 be of some assistance to the Tribunal in considering this
14 question. If we look upon the large number of documents
15 which the prosecution has already served and which, I
16 presume, they will continue to serve as rebuttal evidence
17 that, of course, will necessitate a great deal of time,
18 and if the defense should be permitted to offer surre-
19 buttal evidence, I don't know when this trial is going
20 to end.
21

22 In order to bring this home forcibly to the Tri-
23 bunal, I would just like to refer to this first document
24 which has been offered, and it is a typical example, I
25 believe, of many of the others they intend to offer.
Now, as to the first question: Could the prosecution

1 have foreseen evidence on this point? The answer to tha
2 is yes, because the certificate attached to this docu-
3 ment, 1634-M, is dated June 16, 1946, five days after th
4 prosecution started offering evidence in this case.

5 THE PRESIDENT: Well, Mr. Logan, even if we
6 decide to admit evidence in rebuttal, it does not follow
7 that we will admit all the evidence they tender.

8 MR. LOGAN: I appreciate that, Mr. President,
9 but the point I'm trying to make is that this particular
10 document is identical with many others and it stands on
11 the same footing as I wish to point out.

12 Now, let's take, for example, the reason why
13 they wish to offer this document. They say they ques-
14 tioned one of the witnesses, HORINOUCI, and he testifi
15 that he understood the documents were burned, and he
16 testified to some facts, and they say this is their
17 contention: This appears to be the document that
18 HORINOUCI was talking about although the contents are
19 different.
20

21 THE PRESIDENT: We prefer you to deal with the
22 general principle and not with particular documents,
23 Mr. Logan.

24 MR. LOGAN: Well, this goes to the general
25 principle. If the Tribunal will just bear with me a
few minutes, I will point it out to you. They also

1 state that one of the tests in rebuttal evidence is that
2 the defense should have a fair opportunity to meet it,
3 or had a fair opportunity to meet it.

4 They state that the witness KAWABE was ques-
5 tioned on the contents of this document and refer to
6 pages 22,029 and 22,031 of the record. On those pages,
7 it does not appear that KAWABE was ever shown the docu-
8 ment or that anything in the document was read to him
9 or that his attention was called to it. He did not deny
10 the questions put to him. He stated he had no recollec-
11 tion. Now, what is the purpose of offering the document
12 at this time? To show that he should have a recollection?

13 The Tribunal will probably recall that when the
14 prosecution started cross-examining defense witnesses
15 I asked that these documents should be marked and that
16 attention should be called to specific documents. That
17 was not done. They were not given the opportunity to
18 either admit or deny the documents.

19 So that I say that this particular document,
20 1634-M, which is a sample of many of the others, does
21 not meet the test, the most important test which the
22 prosecutor has announced: that the defense have had a
23 fair opportunity to meet it.
24

25 MR. COMYNS CARR: May it please the Tribunal.

THE PRESIDENT: Mr. Comyns Carr.

1 MR. COMYNS CARR: In my submission, this is a
2 clearly admissible document, having regard to the evi-
3 dence of HORINOUCI alone.

4 THE PRESIDENT: We do not want this particular
5 document made the subject of argument tonight.

6 We will adjourn until half past nine tomorrow
7 morning. In the meantime we will confer.

8 (Whereupon, at 1600, an adjourn-
9 ment was taken until Tuesday, 13 January
10 1948, at 0930.)

11 - - -
12
13
14
15
16
17
18
19
20
21
22
23
24
25